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*The*  
MOTION PICTURE  
I N D U S T R Y

*By*

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568

NEW YORK  
D. VAN NOSTRAND COMPANY, INC.  
250 FOURTH AVENUE  
1933

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## FOREWORD

THIS book is the result of a study of the motion picture industry begun several years ago. The work was made possible through the generous cooperation of Mr. Joseph P. Kennedy, and sincere appreciation is hereby expressed to him for the opportunity thus presented. It is ample evidence of his broad vision that at no time and under no circumstances has he suggested how the study should be conducted, nor has he in the slightest manner attempted to influence the way in which the material should be presented or the conclusions reached.

3.20 The author wishes to acknowledge his deep appreciation of the encouragement and cooperation given him by Wallace B. Donham, Dean of the Harvard Graduate School of Business Administration.

1918 B Indebtedness is also acknowledged to those men in all branches of the industry, too numerous to mention individually, who gave freely of their time and thought to those representatives of the School who approached them for assistance. Needless to say, without such real cooperation this study would have been quite impossible.

It should also be noted that the author presented some of the early results of this study in "case" form as Volume 8 of the *Harvard Business Reports* (McGraw-Hill Book Company, Inc., 1930). Through the courtesy of the publishers of that series, such material has been freely drawn upon here.

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*Soldiers Field*  
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## INTRODUCTION

A WRITER in an English magazine, not long since, opened his discussion of the cinema by saying in substance that, although it was clearly impossible to discuss motion pictures without considering the business aspects of the industry, yet this phase was a disagreeable one to talk about and that consequently he would discuss it as summarily as possible in order to get on to the more interesting topics. This curious attitude of mind unfortunately is far too common. While it is true that there are many persons who are not interested in the business aspects of this or any other industry, yet to dismiss such phases of business as being either disagreeable or incidental is indeed shortsighted. It may safely be said that far too little attention has been given by a great many people, who should know better, to the business aspects of motion pictures.

It is true that the motion picture industry does have an artistic side which is of primary interest to many persons, but other industries also have their artistic aspects. So far as motion pictures are concerned, the public is primarily interested in the entertainment which is being provided; hence, perhaps the less learned about the commercial aspects, the greater the enjoyment from the art. The industry has its social significance; so do all other industries. It is probably true that every business has, at one time or another, been criticized because it has not worked steadily toward the particular social objectives deemed by certain persons or groups as being of primary importance. Yet fundamentally it must be borne in mind that the production, distribution, and exhibition of pictures is, and up to the present time has been, primarily a business dependent upon private capital and upon private industry. Its builders had ideals, but if there had not been times when the business

yielded a profit those ideals would have remained forever in the realm of the imagination.

It is frankly to the business acumen of profit-seeking promoters that the public owes its motion picture entertainment. In its development there were, are, and will be of course tremendous problems of an artistic, cultural, and social character to be faced. But there could not be a satisfactory solution to these problems unless the equally difficult business problems were also frankly met. It is unfortunate that the bulk of the voluntary critics of the cinema neither understand nor properly appreciate these problems. Their criticisms are therefore often quite beside the point, their suggestions impractical, and much of their effort is wasted.

The industry itself is partly responsible. It has made no real attempt to give to the public any thoroughgoing, unbiased discussion of its organization, operation, or profits. It has been too busily engaged with its daily routine tasks. If it thought about it at all, it doubtless believed that the public was not interested. It probably assumed that the progress and ideals which were evident enough to the industry would be equally so to others and would constitute their own justification. Such information as has been given to the public on these problems has largely come through a source frankly biased and interested primarily in maintaining "friendly public relations". Without any thought of questioning the justification for such an organization, it is apparent that its interests have been primarily in other directions and what it has said has not borne the weight which impartiality would give.

In this book, the author makes no apology for discussing the business aspects of the motion picture industry; nor is any needed. When critics inside and outside the organization, such as the ones referred to above, have gotten over their present attitude, there will be more sense in their comments and more constructiveness in their suggestions. But it must be noted that there are many in the industry

for whom it is quite as imperative that they reconstruct their own scale of values as it is for some of those outside.

A case in point is the controversy which has developed concerning the wisdom or necessity of so-called "banker control" of the industry. The entrance of the banking interests into the industry was a foregone conclusion. It was perfectly apparent years ago that as the industry grew it would have to be assisted in its financing from the outside. The obvious source of such funds would be the usual financial groups. The expansions in 1925, 1926, and on through 1929 would have been impossible without such assistance. Overexpansion occurred. Whether it was the fault of the banker in extending credit to finance the rapid expansion, not justified by conditions, or whether it was the fault of the industry in seeking support for expansion programs that they should have known were primarily competitive in their conception and not so conservative as they should have been—the blunt fact remains that outside financing was available. The industry, itself, was unable to meet its obligations, and like all other financially embarrassed organizations it passed under the guidance of its creditors. It is apparent also, of course, that profits which had been made in the industry were attractive to those interested in substantial returns from whatever source. The whole problem came to a focal point with the depression, but it is obviously unwise to say that it was caused by the depression—the motivating forces lay deeper.

It is clear that, when this situation did come to a head and economies were called for, those whose interests were being protected, namely the creditors, would demand what seemed to be reasonable improvements. No one familiar with the facts would deny for a moment that enormous and quite unjustifiable wastes existed in the industry. These would have to be eliminated or reduced. If it is said that the bankers were intruding into an industry with which they had had no experience, the obvious reply is that the industry had shown itself quite unable to overcome the difficulties

in which it found itself. Much as one would like to see an individual firm solve its own problems, if its management is incapable of doing so within a reasonable time, someone else must take a hand in the situation, if that someone else has interests that are seriously and adversely affected by the inability of the borrower to meet its obligations. All this is no particular defense of the financier. Bankers have rushed in before to handle businesses with which they were quite unfamiliar, and certainly no one would argue that they have always made an unqualified success of such ventures. They have acted hastily without securing adequate experience and knowledge; they have acted by formula rather than by business acumen; and they have sometimes ruined the concern which they were attempting to salvage. It is not contended that these consequences always follow, but they have occurred in the past and will probably occur again. It is quite natural that those whose lives and livelihood had been bound up in this fascinating business for years would look askance at the entrance of new control, would attempt to defend what they had done in the past, would magnify the inevitable mistakes of the new management, and would be likely to say little about the good that might be accomplished. They had had little cause to think deeply about the source of the funds which financed their activities. These came from elsewhere, and the source frequently must have seemed inexhaustible.

Since the fundamental problems of the industry should be those of production, distribution and exhibition, it is important to have a thorough understanding of these issues before considering the broad financial consideration toward which the public's attention is so frequently directed. If no special consideration is given in this book to the problems of intercorporate financial relations, financial structure, and reorganizations, it is not because of a failure to appreciate either their significance or the amount of interest in them. They are not discussed at length for two reasons. The first is that to which reference has already been made, namely



that the fundamental problems are those of production, distribution, and exhibition. The second reason is that it is very dubious whether any analysis of these financial considerations would be sufficiently enlightening to be of value. Only the outward manifestations could be discussed; the underlying considerations, involving a host of facts unknown and in many cases beyond the ability of the research man to ascertain, cannot be put in print at this time, if indeed it can ever be done. Furthermore, it is doubtful whether any real purpose would be served by publishing such information. Much can be said for taking the position that a great deal of harm might be done and little good accomplished. The issues involved are extremely important and of a broad public character. They are not, however, peculiar to the motion picture industry.

Between the financial and the producer-distributor-exhibitor interests it is apparent that a conflict would develop. It is no part of this discussion to place the responsibility for the creation of the issue; its aim is merely to call attention to the fact that the results, so far as the public is concerned, would be reflected in the form of entertainment offered on the screen. Most of us have some interest in screen entertainment which accords with our own taste and ideals. Considering the necessary relation between business and art, it would appear even to the casual observer a mere commonplace to say that the problems suggested in this book should receive major attention.

It is with the thought of presenting some of these problems that this is written.





## CHAPTER I

### BACKGROUND OF THE INDUSTRY

No attempt to understand the present problems of the American motion picture industry can be even partially successful without some appreciation of the character of the development out of which the present situation has evolved. That development has been interesting from many different angles. For the purpose of the present discussion, however, it is chiefly important that attention should be centered on the character of the problems which confronted those responsible for the development of the business in so far as they related to the commercial aspects of production, distribution, and exhibition. These problems were very numerous, very diverse, and very perplexing. The men who undertook to solve them had, in the main, no precedents to guide them. If under these circumstances many mistakes were made and the record of failures seems high, it must be borne in mind that it is doubtful whether in the hands of any other persons a better record would have been possible. There seems in some quarters to be a tendency to cast unfavorable reflections upon these pioneers in the motion picture industry. The fact that many of those identified with the business were born abroad and that their earlier years were spent in other lines of business is deemed sufficient grounds for speaking more or less sarcastically about the men and their achievements. Yet when all is said and done, these men met problems distinctly novel, substantially unlike those which had existed in other fields of industry; made at least measurable progress toward solving them; and built up results far beyond anything achieved by the vast majority of those who criticize so freely, results which were very tangible in terms of financial return and which

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are far greater when expressed in the intangible terms of pleasurable entertainment to millions and millions of people. Twenty years after an event has occurred, it is often an easy thing to point out what should have been done. When confronted with a present-day problem, it is always easier to criticize adversely than it is to meet the situation constructively. Whatever criticisms may be directed toward these pioneers, their achievements both tangible and intangible are too definite and too permanent to be scoffed at.

— The first public screen showing ever made of a motion picture occurred on May 21, 1895, when Otway Latham exhibited a film occupying about four minutes of screen time and depicting a prize fight. It was several years later, however, before the real commercial development of the industry began. In 1902, T. L. Tally opened in Los Angeles the first amusement house devoted exclusively to pictures. In 1903, Adolph Zukor began the operation of an arcade in South Union Square in New York City. In 1906, Carl Laemmle opened a show house in Chicago, and William Fox started the operation of a penny arcade and picture show in Brooklyn. By the close of 1906, the new industry was definitely launched as a commercial enterprise.<sup>1</sup>

— In the early stages of its development, the business was dominated by those companies interested primarily in the manufacture and lease or sale of motion picture equipment.<sup>2</sup> Once having disposed of the means of displaying a film, the

<sup>1</sup> In this survey of the development of the industry, full appreciation must be given to Terry Ramsaye's *Million and One Nights* (Simon and Schuster, 1926), and to Benjamin B. Hampton's *History of the Movies*, 1931 (Covici, Friede, Inc.); substantial use has also been made of H. C. Hawley's *Distribution as a Factor in Commercial Integration in the Motion Picture Industry*, a doctoral thesis prepared under the direction of the author of this book in the Harvard Graduate School of Business Administration. A great wealth of material is also to be found in *Federal Trade Commission v. Famous Players-Lasky Corporation*, et al., Docket 835.

<sup>2</sup> It is an interesting fact that today, after having once succeeded in freeing itself pretty largely from the domination of these outside interests, the motion picture industry again finds itself substantially influenced and in some cases actually controlled by manufacturers and distributors of certain types of equipment.

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next task was to insure an adequate supply of films to the exhibitor. The production of these films was undertaken by the same companies that manufactured and sold the equipment. Since the demand for film subjects exceeded the available supply, serious problems of distribution did not confront the early industry. The producer and the distributor also shared a definite community of interests since the patronage which the industry received measured the potentiality of the industry. The Kinetoscope Company, which distributed Edison's Kinetoscope machine and his early films, reached the exhibitors rather easily because of the relatively small number of such exhibitors. The Kinetoscope was a peep-show device by means of which the spectator peered through a lens which magnified the flashing images on a continuously moving film which, because of the persistence of vision, created the illusion of viewing objects in motion. The novelty of the Kinetoscope kept exhibitors alert to the possibilities of peep-show patronage to the fullest extent, and hence the need for sales promotion was at a minimum. The only contact required between the Kinetoscope Company and the exhibitors consisted of a catalogue describing the subjects and giving the list prices. Films were purchased outright, prices ranging from \$10 to \$25 a film, depending upon the subject matter contained. The showmen used these films until complete physical depreciation had been effected. The novelty of the peep show, together with the fact that each individual customer required a complete running of the film to get his penny's worth, allowed its continuance with no serious falling off in patronage. It soon became apparent that variety was needed in the stock, even though the films were not completely worn out. Those films abandoned by an exhibitor were no longer of any use to him, but they still were of exhibition value to the showman who had not already exhibited them to his public.

When successful projection made screen exhibition possible, the problem of distribution became much more serious. The first productions for this type of exhibition

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were sporadic and were sold outright to showmen by the producers. Projection upon the screen, however, enabled many patrons to view a subject simultaneously, thereby shortening the duration of the demand in a given community. Thus a need for a more frequent change of programs became manifest. However, as the exhibitor acceded to this demand, he found himself in possession of an obsolete but physically undepreciated stock of films. Since frequent changes of subject became necessary before cost and expenses could be covered and a profit made, the film cost soon became excessive. Inasmuch as a separate print had to be made for each exhibitor, the system also involved an uneconomic duplication of prints.

The solution to this problem was first suggested in 1902 by Harry J. Miles of San Francisco. Miles purchased films and leased them successively to various exhibitors for a week at a time at half the original purchase price. Thus each exhibitor's film cost was cut in half, and at the same time Miles realized a handsome profit, his films having made the rounds of nearby exhibitors. In this initial effort is to be found the origin of the film exchange, wherein a new functionary appeared who confined his activities wholly to those of middleman. He maintained film stocks, supervised the physical handling of the product as it passed from one exhibitor to another, scheduled shipments to meet changes of program, and attended to the inspection and repair of damaged films. The most significant development in this period, however, was the altered terms of sale by virtue of which the title to the film remained with the exchange man; the exhibitors merely obtained a license to exhibit a particular film in a particular place for a stipulated period of time.

However, even thus early in the development of the industry there evolved one of the most serious of problems. It must be borne in mind that the number of motion picture houses was steadily increasing, with a consequent increase in the demand for films. An essential requirement, as has



already been indicated, was that the film must be new. Then, as since, the first showing of a picture had the greatest entertainment value; it often commanded 10 to 20 times the rental that it could command later. In fact, "after a month the price became almost nominal". This led to reckless price cutting, violation of release dates,<sup>3</sup> and many other forms of unfair practice on the part of competing exchanges in order to swell their volume of business.

Another factor complicated the situation. The manufacturers of cameras and projectors had founded their business upon patent rights. As usually happens, no one man or company either invented or had exclusive control of all the various technical improvements. Yet each was concerned with selling as great a number of installations as possible. To attain some measure of control it was common for a seller to insert in his contract of sale a clause requiring that an exhibitor use with his machine only those films produced by the seller. But since each exchange strove constantly to augment, by fair means or foul, the volume of its sales and profits and since there was a steadily increasing number of small independent exhibitors, the difficulty of enforcing such a clause became ever more apparent.

The first outstanding step toward stabilizing the situation came in 1908. In that year the Motion Picture Patents Company was organized, consisting of, in addition to seven producers of equipment and pictures which had been licensed under the fundamental Edison patents, the American Biograph Company; George Kleine, a Chicago film distributor; and the Edison Company. Under the terms of the agreement entered into by these interests, all patent rights and claims were surrendered by the several companies and pooled with the newly organized Motion Picture Patents Company. Each individual producer, however, retained the right to make any picture he saw fit and to distribute it through any channel he chose. Only licensed exchanges were

<sup>3</sup> See Chapter IX.

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permitted to handle films produced by the Motion Picture Patents Company, however, and they in turn as licensed representatives agreed to sell only to such theaters as had licensed projectors. Since at that time all positive films were leased on a flat footage basis, and since any number of positives could be made from one negative and a positive could be shown by any number of theaters, no particular problem of apportionment of film sales among the member companies arose.

This move, though fundamental, did not fully meet the situation. Unlicensed picture producers continued to offer their product on the market. Independent exchanges continued to operate. Both these conditions were made possible by tremendous demands for films on the part of exhibitors. Even the licensed exchanges of the Patents Company could not always be kept under control and not infrequently they resorted, under the lure of profit, to violation of the terms of their agreement. It seemed that the only method by which the situation could be kept in hand was to secure a consolidation of the exchanges. So, in 1910, the General Film Company was organized by the members of the Patents Company for the purpose of distributing its films. The General Film Company was successful, under threat of revocation of license, in buying 57 of the 58 exchanges then operating throughout the country. Thus the control of the "film trust" reached its height.

Independents, however, led by such men as William Fox, who operated the fifty-eighth exchange and who chose to fight rather than sell, and Carl Laemmle at once opened war on the "trust". In consequence, in 1915, the General Film Company was dissolved by order of the Federal courts.

Aside from any legal action, however, there were economic forces which were undermining the combination, forces which were seeking to place the motion picture business definitely on a new basis. Both the public and exhibitors became interested in obtaining a better quality of pictures and not merely in viewing or exhibiting a given

## *Background of the Industry* ~ ~ ~ ~ 7

number of feet of films. This policy involved a sharp break with the policy adopted by the General Film Company. Under the policy of the latter, "no account was taken of individual pictures or of individual actors or directors, and the flat rate per foot applied without regard to the number of separate pictures furnished, the quality or character of the pictures, the size of the theater, or of the town or city in which it was located, and regardless of whether the particular exhibition was a first or subsequent run". But if feature pictures of varying length and of varying quality were introduced, then some system of comparative pricing seemed logical. Moreover, a producing company, striving to develop a demand for its own particular type of picture, could scarcely be satisfied with having its product sold on an equal basis with that of all other producers.

When this stage in the evolution of the industry was reached, it is clear that two problems emerged. First, there was the baffling one of determining the type of pictures that would satisfy the public demand. The attempt to analyze, forecast, and meet the constantly varying whims of the entertainment-seeking public still constitutes one of the major problems of the motion picture business. This problem will be dealt with in detail at a later point in this volume.<sup>4</sup>

The second important problem which emerged was that of determining the manner in which these pictures were to be priced and distributed. In the earlier days pictures were licensed through exchanges to exhibitors under what has been designated as the "program system", a plan "by virtue of which an exhibitor could purchase the right to use a certain number of reels per day, constituting his entire program, for an indefinite time in the future at a flat rate per foot of film . . . What the distributors sold and what the exhibitors wanted was a *service*, that is, a constant supply of two or three reels of motion picture film furnished two

<sup>4</sup> See Chapters III and IV.



or three or more times a week." This plan, however, clearly could not continue beyond the time when the public began to manifest a substantial interest in the type of picture itself and in the actors who participated in it. Indeed, it gave birth to what came to be known as the "star" plan, whereby, although groups of pictures were offered the exhibitor, the offerings consisted of several series of seven or eight pictures, each series featuring a particular star. An exhibitor, for instance, bought six Pickfords or six Harts. Thus the stress ceased to be on the program as a whole and came to be centered on the star. This plan predominated until between 1917 and 1919, coming to be used less and less thereafter because of rising costs. The causes for these increased costs, accompanying the policy of producing feature pictures in which stars were emphasized, are not far to seek. Scenarios became more expensive. The filming of the pictures cost more and more as they were made ever more elaborate. Another major factor was to be found in salaries paid the actors. It was always the stars who were advertised to the public. Many of these became immensely popular and came to feel that it was their personality and acting, rather than either the plot or the producer's name, which attracted the public. Therefore, the stars demanded substantial increases in salary, so substantial that the producer deemed them excessive.

This dependence upon the reputation of an individual star came in itself to be considered debatable policy, wholly aside from the question of salary. The cost of building up such a reputation was not inconsiderable. Furthermore, even though successful, it was likely to prove, for obvious reasons, somewhat ephemeral. Combined with the generally rising costs of production all along the line, it led to a belief that a further revision of the basis of sales was necessary. Eventually, it led to the general adoption of a new policy of block booking, relative to which more will be said presently.

A third development which probably played some part in

the subsequent trend toward integration also appeared to add its weight to that of the feature picture and the star system. This was a substantial change in the type of theater. The success of those who made early experiments in the production and exhibition of feature pictures aroused the interest of others to the possibilities of this type of picture and hastened its popularity. The first exhibitions of these films took place in shooting galleries, or in theaters which were remodeled shooting galleries. The attempt to place the motion picture on a basis of equality with the spoken drama seemed to demand a more formal theater for exhibition. The first efforts in this direction centered about the leasing of legitimate theaters. Then the practice of prerelease showings for particular pictures, especially in New York and Chicago, became common among producers. The feature picture also appeared in the vaudeville houses as an essential part of their program. There it came to be used as a regular attraction instead of simply a makeshift entertainment between shows. A most important result of this development came with the exclusive use of theaters designed especially for the exhibition of motion pictures. Gradually the size of the motion picture theaters increased beyond that of the so-called legitimate houses, since there was no limiting factor of audibility such as operates with the spoken drama and also because the figures on the screen were large enough to transmit minute details of facial expression much greater distances than could actors of the legitimate stage.

Many of the owners of these new theaters were men who had been showmen in the earlier period. Their prosperity had enabled them to finance the transition to the more elaborate motion picture theater. Moreover, as additional funds became available, theater chains, generally highly localized in character, began to assume significance. As early as 1912, such chains as those of Gordon in Boston, Kunsky in Detroit, Mark in New York, and Swanson in Salt Lake City came into existence.

Thus the feature picture, the star system, and the new motion picture theater all played their part in the commercial expansion of the industry. As a result of these major influences, a number of new factors became significant. First and most important, the product was given individuality both as to story and as to star, with the result that the exhibitors had a basis for picture selection. They were no longer leasing a thousand feet of film at random, but a particular story and a designated leading star. Second, these changes caused variations in value and in price both for different pictures shown in a given theater and for the same picture shown in different theaters. In the third place, because of the exclusive character of the licensing agreement and in order to insure the producer a maximum revenue to apply against negative film costs, a wider geographic distribution was sought. Because theaters were widely scattered and because the first showing of a feature picture exhausted its exhibition value in any small localized area, this necessity of securing wide national distribution for a product, varying in price and requiring careful servicing and much rehandling, involved two serious problems: the securing of efficient distribution and the securing of aggressive sales promotion.

With these requirements in mind, what was the situation in 1912? On the whole it was not a satisfactory one from the point of view of the producers, who naturally were desirous of securing the widest distribution possible. Although it is difficult to determine exactly the number of individually owned exchanges then existing, it is undoubtedly true that, considering the number of producers, there was a lack of an adequate number of really reliable exchanges available to any one producer.

With regard to the extensiveness of national distribution, the only company having a national system of exchanges in 1912 was the General Film Company, which distributed pictures exclusively for the manufacturers and importers in the Patents Company group. Since the productions of inde-

pendent producers could not be licensed by the Patents Company and, therefore, could not be distributed through the exchanges of the General Film Company, the independent producer could secure national distribution of his product only through independent exchange men scattered throughout the country and operating on a state right basis.<sup>5</sup> Most of this state right distribution was confined to the pictures of small independent producers who could not afford to maintain national exchange systems.

In the second place, the methods employed by the early state right distributors were unsatisfactory for the efficient distribution of feature pictures. Many exchange men in the state right group were also exhibitors. In fact, the original purpose of their exchange activities in many cases had been that of securing films for their own theaters. When, therefore, a state right exchange man secured territorial rights for the distribution of a producer's product, he was interested primarily in the use of that product in his own houses. After the distributor's own exhibitions had received attention, distribution to other exhibitors in the territory was undertaken. This casual type of distribution had serious shortcomings for the producer who desired aggressive selling for his product. Furthermore, since no one source of films could supply a sufficient number to meet the total requirements of the average theater, each exchange man usually handled the product of several producers. This fact accentuated a diversity of interest on the part of the distributor, so that he was further inclined to offer but mediocre sales promotion to any particular producer's product. It also affected the distributor's performance of service functions upon which each producer depended for the maintenance of the physical quality of the film and for its prompt delivery to the exhibitor.

<sup>5</sup> State right exchanges are independent organizations which buy outright, or more commonly lease under exclusive rights for perhaps five years, films from various producers and in turn lease them to exhibitors within their territory.



The terms of sale employed by state right exchange men were also deterrents to aggressive selling. The program or service idea was still in vogue, with the result that films were not distributed intensively throughout the respective territories and failed to command rentals which were commensurate with the earning power of the feature picture. The producer was powerless to remedy the situation, for, because of the variations in the quality of the product and the differences in purchasing ability between exhibitors of different classes, he could not dictate to the distributor the prices at which he should sublease films to exhibitors. Therefore, the entire success of profitable production depended upon the aggressiveness which exchange men displayed in covering their territories and in securing maximum rentals from the exhibitors.

Not only were these specific difficulties experienced by producers with individual exchange men, but the sum total of all national distribution on a state right basis presented unsatisfactory arrangements from the producer's point of view. Most important was the lack of control over national distribution. Some exchange men were satisfactory; others were not; and no uniformity of practice could be dictated by the producer. This lack of centralized control also left room for much dishonesty, some of which was deliberate but more of which resulted from general laxity of control. Release date violations arose chiefly from the cutthroat competition between exchange men. True, this evil lessened somewhat with the advent of the longer picture, which had an average life of from one to two years as against that of a few months for the shorter film. A more important evil was that of "bicycling",<sup>6</sup> that is, the transporting of a film from its authorized place of exhibition to another theater which had made no leasing agreement and had paid no rental for its use. Where exchange men were careless in securing the immediate return of prints to the exchange fol-

<sup>6</sup> See p. 281.

lowing legitimate exhibitions, this form of unfair practice became quite common. Since the producer could not police each exchange territory for violations of this type, he was entirely dependent upon the integrity of the exhibitor. A final disadvantage of state right distribution to the producer arose from the fact that no adequate testing of the local exhibition market could be made until the process of distribution had partially run its course. Consequently, the realization that a particular picture was receiving exceptional public patronage came too late for the producer to capitalize fully on it.

It is of interest to note that according to a study made by the United States Bureau of the Census (Census of Distribution) the cost of operating independent exchanges in 1929 was 35% of the total volume of business done, whereas producers' exchanges operated at an expense ratio of 15.16%. In 1929, out of 533 exchanges, there were 444 producers' exchanges as against 75 independent exchanges (exclusive of 14 export exchanges); the former, representing 83.3% of the total, handled 94.67% of the business. The remaining business was divided between the independent exchanges which did 2.2% and the export exchanges which did 3.1%.

The difficulties indicated above resulted in the establishment of various types of affiliations which would yield to the producer a definite amount of control in the distribution of the copyrighted positive films to which he had always maintained title. In addition to this increase in control, there were other positive advantages to be gained from such affiliations. It was possible that a somewhat higher level of rentals might be obtained than formerly. The price bargain with the exhibitor might be made more shrewdly. On the other hand, so long as the producer sold his pictures to the independent exchange, the price which he received was in no small measure a reflection of what that intermediary told him his picture was worth and of what that particular exchange was able to pay. Owning his distributive organiza-

tion made necessary one bargain rather than two and placed him in a more advantageous position to drive that one. Bearing in mind the common assumption that there is and can be no relation between the cost of producing a motion picture and its sales value, the special significance of this argument becomes the more clear. Theoretically, too, a producer in control of his own distribution, since he deals with the exhibitor directly, is in a better position to judge the kind of picture to make, although actually this factor probably did not play much of a part in the story.

It is important to note that this trend toward integration of producer and distributor has become the common rule. Obviously, only those companies with adequate financial resources are able to pursue this policy. There are still small producers who continue to distribute through "state righters". That this is not the most economically advantageous policy may help to explain the trend toward large-scale production in this industry. Both the small producer and the independent exchange are becoming relatively less and less a factor in the motion picture business. Today the majority of producers operate their own exchanges or distribute through those producers who do.

A study of the development of the Famous Players-Lasky Corporation, which Adolph Zukor organized in 1912 and which became the Paramount Famous Lasky Corporation after the acquisition of the Paramount company in 1916, illustrates this whole situation in a most interesting manner. While the entire evolution of this company well repays study, it is not possible here to trace the various steps in its history. Let it suffice to say that Mr. Zukor experienced his most serious difficulties in securing adequate distribution of his product at prices which allowed for expansion of the feature picture idea. He made repeated attempts to secure the necessary aggressiveness and cooperation both from the state right distributors and from the Paramount Pictures Corporation, a purely distributing organization. Failing in this, he acquired distribution units



and placed them under the same centralized control as production.

The process of integration developed even when not initiated by producers. The histories of First National Pictures, Incorporated, of the Universal Pictures Corporation, and of the Pathé Exchange, Incorporated, are interesting in this connection. The first was originally organized by exhibitors in 1917 as a cooperative buying group, known as the First National Exhibitors Circuit, Incorporated, for the purpose of securing the advantages of increased buying power and of control of pictures to be shown. The licensed members not only bought pictures for exhibition in their own theaters, but as individuals they also operated exchanges in their own territory. It was only a matter of time, however, before the company began to produce its own pictures directly and became one of the foremost producers in the field, while retaining its own distributive organization.

The history of the Universal Pictures Corporation follows the same general lines. Carl Laemmle started as an exhibitor. During the fight with the General Film Company, having been refused films by the "trust", he organized his own exchange in order to secure a sufficient number of pictures with which to operate. Today this company, too, ranks as one of the largest producers. Still another illustration is that of the Pathé Exchange, Incorporated. Up to June, 1927, the business of this company "was confined almost exclusively to the distribution of motion pictures as distinguished from the production of motion pictures". It then entered into the field of production on an extensive scale with the acquisition of the DeMille Studios and the producing business of the Producers Distributing Corporation and the Cinema Corporation of America, Incorporated. Another example is that of the Mutual Film Corporation, which had its origin prior to 1912 in an association of state right distributors organized for the production of pictures. The Metro Pictures Corporation was formed in 1915 by a

group of exchanges for the production of pictures to augment the supply then being obtained from other producers. In every case the reasons were essentially the same. The company was anxious to control the quality and type of pictures handled at prices that seemed to be fair.

Having given a substantial amount of attention to the movement toward integration as between the producers and distributors, it becomes necessary to give some thought to the historical development of the acquisition by the producer-distributors of a larger measure of control over their retail outlets. The entrance of the producer-distributors into the exhibition branch of the industry was caused by a group of factors, a number of which originated in the peculiar technique required by the motion picture for its most effective distribution. The problems surrounding the pricing of pictures by distributors to theaters,<sup>7</sup> competition for desirable play dates and the whole problem of booking,<sup>8</sup> desirability of close checking upon physical distribution of the films under the control of the distributor, the problems arising from the collection of rentals and bad accounts, the inconvenience and expense of disputes,<sup>9</sup> all are problems the existence of which undoubtedly explains this trend. It will be sufficient here to illustrate briefly the character of such influence. For example, a producer-distributor who owns his own theaters is provided with an increase in his bargaining power. Remembering that no producer today can offer a sufficient number of feature pictures fully to supply a theater operating, as the larger number do, two features or more a week, it will be realized that even the producer-controlled theaters must secure some pictures from outside sources. The more theaters a producer owns, therefore, the greater his bargaining power becomes when he enters the general market to buy. Probably a more fundamental explanation, however, than either of the preceding is to be

<sup>7</sup> See Chapter VI.

<sup>8</sup> See Chapters III and IV.

<sup>9</sup> See Chapter IX.

found in the desire of the producer to assure himself of outlets for his own product and of some certain income to meet his production costs. An efficiently operated chain of theaters, strategically located, should yield some contribution toward producing costs. There is, for example, the exploitation value which is derived from the exhibition of a picture shown in a de luxe house at a key point. Then, too, the maximum revenue from any picture comes in the first three to six months of its showing. A substantial proportion of this accrues to the producer, if he owns a considerable number of outlets, since naturally his theaters are first-run houses for his own pictures. The fact that the film is leased rather than sold outright may also suggest the desirability of a close working agreement between the two parties concerned.

These and similar problems involved in the mechanics of distribution were unquestionably strong contributing factors toward integration. It is entirely possible that in the period preceding 1925 they played a larger part in this connection than they did subsequently when, perhaps it may be said, their influence was secondary as contrasted with certain other influences to which reference will be made shortly. To assume, as is sometimes done, that the organization of theater chains had its inception about 1925 or 1926 is not historically correct. Not to mention other earlier and isolated instances, it may be noted that by April, 1919, First National controlled 190 first-run theaters and approximately 40 subsequent-run houses, not counting some 366 theaters which were controlled under subfranchise agreements. In January, 1920, the total number of theaters controlled by First National had increased to 639; of these 224 were first-run houses, 49 were subsequent-run houses, and 366 were outlets operated by subfranchise holders.

The Famous Players-Lasky Corporation, too, in order to guarantee adequate representation for Famous Players pictures in certain sections of the country and to secure exploitation through prerelease and first-run houses, became

interested in theater control. By August 31, 1921, this company had acquired 303 theaters, 213 of which were included in the holdings of Southern Enterprises, Incorporated, a concern which had been organized on April 30, 1919, by the Famous Players-Lasky Corporation. Because of the strong position of the First National franchise holders in the South, Famous Players had experienced some difficulty in disposing of its product at rentals which it considered fair. It was for that reason that Southern Enterprises, Incorporated, was organized. The company faced a similar situation in New England when a merger of the Gray, Gordon, and Black circuits was considered during 1919. Eventually an agreement was made with Black, whereby he was to manage a new corporation which would include his theater holdings. Later, Famous Players-Lasky took over full control of the company as New England Theaters, Incorporated.

During 1919 and 1920, the Goldwyn Pictures Corporation, which had been organized in 1916, experienced difficulty in securing first-run engagements for its pictures. By the fall of 1921, a half interest in from 25 to 30 theaters had been acquired for the dual purpose of securing representation and exploitation for the company's films. In 1919, Loew's, Incorporated, which owned a chain of 70 important vaudeville and motion picture theaters, bought out the Metro Pictures Corporation, which had been organized in 1915. This merger provided an assured outlet for Metro pictures in first-run theaters which had not previously been possible.

Following this early rush to obtain theater control, there came a reaction. Numerous instances can be cited. Thus, the Famous Players-Lasky Corporation on September 1, 1924, wholly or partially controlled only 181 theaters, a decrease of 122 houses since 1922. First National experienced a similar decline. In the fall of 1921, there were 3,400 First National subfranchise holders. Because of the necessity of taking all First National productions, many theater owners became dissatisfied and canceled their agreements, with the



result that by the spring of 1923 the number of subfranchise holders had diminished to 2,700, a decline which marked the beginning of a general breakdown of the franchise arrangement. This decline in holdings was doubtless caused by a number of considerations, some of which were peculiar to the individual company as was the case in First National, and some of which were more general. Thus, the Famous Players-Lasky Corporation found that in acquiring theaters in the South it had obtained a considerable number of small-town theaters which were relatively less profitable than those situated in other places. After the first skirmish with First National had subsided, therefore, a considerable number of these were sold. On a smaller scale, the same thing happened with the New England houses acquired by this same company. It may be true that the complaint issued by the Federal Trade Commission on August 31, 1931, against the Famous Players-Lasky Corporation and affiliated companies, particularly with reference to block booking, stimulated a reversal of policy.

By 1925, there were also some other embryo chains in existence. Fox had acquired 27 theaters situated chiefly in New York. Universal also had a few theaters which had been secured over a period of about two years. With the exception of First National and Loew's, theater holdings of these distributors were localized to a considerable degree. Even the Famous Players-Lasky Corporation controlled but few theaters outside the southern New England district.

Up to 1925, the acquisition of theaters, therefore, had not become very widespread. As has already been indicated, there were two general reasons for the acquisition movement. The first was the desire on the part of the distributor to secure a guaranteed outlet for the company's product. While it can hardly be said that this was the stated purpose of the First National efforts, the acquisition of theaters by this company did provide outlets for the product of the distributors which the company represented, and it was to

compete with this situation that Famous Players-Lasky Corporation acquired theaters. The second important reason for this development at this time was the desire on the part of distributors to exploit films before they had been released generally. The theater holdings of Loew's and Fox were probably acquired largely with this purpose in view.

It may fairly be said that by 1925 the industry had reached a period of temporary stabilization. The leading producers had acquired their own branches for film distribution. There had been some theater acquisition designed particularly to give a guaranteed outlet for pictures or for exploitation, but these purposes were demonstrated to be most effectively fulfilled in the larger theaters where the earning power was greater,<sup>10</sup> with the result that between 1921 and 1925 there appeared to be a decrease in the number and control of affiliated theaters. The independent producers, distributors, and exhibitors still held an important position in the industry. Independent chains of theaters were growing in number and in size,<sup>11</sup> but their affiliation with producer-distributors had not occurred on any large scale. Not only were production, distribution, and exhibition reasonably well established, but the product itself had become stabilized. The feature picture had universally displaced the short one- and two-reel melodramas. There had, it is true, been some minor technical improvements developed and some new types of stories added to the repertoire of motion pictures by some producers, but in general one is led to believe that the limitations of the silent feature picture had been realized by 1925. The problems connected with developments from 1925 to 1931 will be discussed in subsequent chapters much more completely than it is either necessary

<sup>10</sup> This is in contrast to the present-day tendency to build theaters of moderate size, except in a very few large centers of population.

<sup>11</sup> The number of independent theater chains in 1920 has been given as 571, while the total number in 1925 is listed as 1,500. This increase seems to have been caused chiefly by the small independent exhibitor, who had expanded his local operations to include several theaters located in towns in the immediate vicinity of his original house.



or desirable to discuss them at this point. It would be wise, however, by means of a brief sketch, to bring the story of this development up to date.

The existence of an increasing number of independent chains, which were becoming significant because of their strong competitive position in the cities in which they operated, has already been indicated. Their strength was felt in two directions. The small independent exhibitor was finding it increasingly difficult to hold his own against the competition of the growing chain. For one thing, the ability of the small exhibitor to draw patronage was jeopardized by the fact that he could not pay sufficiently high rentals to secure the type of picture believed necessary. In other cases the chains dominated first-run exhibition, so that pictures could not be obtained by the independent at any price until after the customary protection period had expired.<sup>12</sup>

Largely to correct these difficulties, many small exhibitors formed what were called in the trade "booking combines".<sup>13</sup> These booking combines, while usually not permanent, did exercise a considerable influence. Their possibilities for success were very limited because of the antagonism of distributors, internal friction, and the competitive bidding of chains for pictures.

The existence of booking combinations, and to a greater extent the existence of well-intrenched independent chains, became competitive factors encountered by the producer-distributor in reaching out for his own retail market. The more aggressive producer-distributors became fully cognizant of the situation and again adopted the policy of theater acquisition. Other influences were, of course, at work. Those fundamental factors to which reference has already been made as contributing toward integration continued to play their part. In fact, it was largely the effect of the independent chains upon these primary factors which stimulated the

<sup>12</sup> See Chapter VII.

<sup>13</sup> See Chapter X.

reentrance of the producer-distributor into the exhibition field. This new policy, furthermore, was tremendously stimulated by an increasing recognition that exhibition itself was one of the most profitable branches of the industry.

As a result, beginning in 1925, a general program of theater acquisition was relaunched. Universal, in 1925, acquired the E. J. Sparkes enterprises. Similar acquisitions were soon under way by other producer-distributors, and prominent independent chains sought to expand their activities by seeking additional retail outlets. Balaban and Katz in the Middle West, Warner Bros. Pictures, Inc., the Famous Players-Lasky Corporation, the West Coast Theaters in northern California, William Fox, and others all entered into an aggressive race for theater acquisition. These acquisitions during 1925 in some considerable measure marked only the beginning of the consolidation program, but the field was becoming rather clearly defined. Famous Players-Lasky, First National, and Loew's, Incorporated, were in the lead, while Universal, Fox, and Warner Brothers were just beginning to assume national importance. In 1926 and 1927 many consolidations of the smaller independent chains took place, but the real battle centered around the acquisition of the larger circuits by producer-distributors and the building of de luxe houses by these same corporations. Into this situation there was injected later a whole series of factors which at this earlier date it was difficult to foresee.

It is rather clear that the rate of integration was continually accelerated by the cumulative effect of competition, by the acquisition of outlets, and by the ease of acquiring capital. This hurried expansion might easily have led to very serious embarrassments, as it eventually did. This embarrassment, in some instances at least, was postponed by the introduction of the sound pictures in the latter part of 1928. The introduction of sound, reluctantly adopted by most producers, came in some respects at a most opportune time—and this is said with due recognition of the fact that

it almost completely revolutionized the entire industry. While silent pictures were still producing satisfactory profits, the limitations of their use, at least in the hands of the men then responsible for the production of pictures, were becoming quite obvious. To an increasing extent "stage presentations", vaudeville, and other forms of supplementary entertainment were being used to bolster up box office receipts. The sound picture completely altered the situation. It appealed at first on the basis of its novelty; when an improved technique had been developed, however, it soon became apparent that the sound picture would establish itself permanently in the cinema. It is scarcely too much to say that the magnitude of the change was at least as great as that exerted by the feature picture in 1912.

The influence of sound cannot be traced here. However, it appears reasonable to conclude that, though the program of integration had already been under way and would have continued in any event, it probably would have been at a much slower pace had sound pictures not been developed.

A distinctive phase of the theater acquisition trend by producer-distributors was that toward horizontal integration. In the main, the integration in the past had been an integration vertically. Producers had affiliated with distributors, and distributors with theaters. The attempt was to secure a completely integrated unit which should function from the inception of an idea for a picture through to the actual exhibition of the film. The new tendency was horizontal rather than vertical. Thus, First National Pictures, Incorporated, was acquired by Warner Brothers in 1928, followed by the Fox-Loew affiliation in the early part of 1929. Various other affiliations have been effected or suggested, all with the purpose of acquiring companies because they were competitors rather than because of any attempt to knit more closely the activities of any one company.

An indication of the results of these operations may be obtained from an examination of Exhibits 1, 2, and 3.

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In 1927, 1928, and 1929, a period in which capital was comparatively easy to get, both bankers and motion picture companies often made commitments for refinancing rather rashly on the strength of an active stock market. The in-

EXHIBIT 1  
GROWTH IN INVESTED CAPITAL 1921-1930  
UNIT: \$1,000

Year	Funded Debt	Capital Stores, Reserves and Surplus	Total Invested Capital
1930 .....	\$305,586	\$544,400	\$849,986
1929 .....	227,066	425,599	652,665
1928 .....	128,537	278,804	407,341
1927 .....	105,465	165,798	271,263
1926 .....	71,578	157,909	229,467
1925 .....	35,935	129,182	165,117
1924 .....	25,266	97,465	122,731
1923 .....	22,703	77,723	100,426
1922 .....	15,966	73,572	89,538
1921 .....	9,691	68,539	78,230

Source: *The Motion Picture Industry*, Poor's Analytical Services, 1932.

EXHIBIT 2  
GROWTH IN COMPOSITE TOTAL ASSETS 1921-1930  
UNIT: \$1,000

Year	Current Assets	Fixed Assets	Other Assets	Total Assets
1930 .....	\$180,648	\$778,396	\$42,270	\$1,001,314
1929 .....	152,927	572,938	38,701	764,566
1928 .....	132,026	308,692	20,238	460,956
1927 .....	111,717	193,336	15,642	320,695
1926 .....	94,679	176,379	11,771	282,829
1925 .....	75,035	118,471	8,743	202,249
1924 .....	52,679	86,448	6,803	145,930
1923 .....	35,989	79,481	6,123	117,593
1922 .....	33,118	68,925	2,753	104,796
1921 .....	35,762	56,513	3,694	95,969

SOURCE: *The Motion Picture Industry*, Poor's Analytical Services, 1932.

flated condition of the market was also responsible for the fact that the properties and stock interests acquired for the purpose of integration were contracted for at prices far above normal. There can be no doubt that this period in the integration movement took on aspects substantially different from those which had been operative in the earlier period. Distribution became a factor only indirectly. Various invest-



ment and banking houses sought to make profits for themselves by injecting themselves definitely into the picture, frequently on their own initiative. Since the effect of their appearance for good or for ill in the industry is discussed elsewhere in this book, there is no occasion for commenting upon it further here. It is significant at this point only because these banking interests did become concerned with various refinancing operations which they believed to be profitable to themselves and also because the expense connected with the production and exhibition of sound pictures made demands upon them for capital which would not have been anticipated two years earlier.

EXHIBIT 3  
VALUE OF MOTION PICTURE EQUIPMENT MANUFACTURED  
UNIT: \$1,000

Year	Motion Picture Cameras and Projectors	Scenery and Stage Equipment	Total
1929 .....	\$8,755	\$5,508	\$14,263
1927 .....	8,345	5,745	14,090
1925 .....	4,620	3,578	8,198
1923 .....	2,631	1,626	4,257
1921 .....	2,869	1,214	4,083

SOURCE: *Statistical Abstract of the United States.*

✓ In addition to the entrance of bankers into the industry, the interest of electrical companies in the business was becoming an increasingly important factor. The Western Electric Company, which was a pioneer in the field of sound equipment, secured a major portion of the available market for recording and reproducing devices before competitors entered the field. To secure distribution for its patented devices, the company issued licenses which were to run for 10 years. It was primarily interested in securing adequate distribution for its own recording and reproducing equipment as such. To provide for the realization of this objective, it affiliated with Fox Film, in connection with Loew and with Gaumont, a British film producer. Other working agreements were established which were designed to promote the use of this equipment to the widest possible extent.

While in some respects the situation was reminiscent of the patent situation of the earlier days, it was not entirely comparable. Instead of limiting the use of its reproduction equipment exclusively to films recorded by Western Electric recording apparatus, Western Electric from the beginning followed a policy of permitting the use of its equipment for the reproducing of films which had been recorded on apparatus other than its own. There were several reasons for this policy of interchangeability. One was that Western Electric came to the motion picture industry with its product as an outsider seeking the market, whereas it may be recalled that the Motion Picture Patents Company was composed of various producers within the industry who had pooled their individual patents in order to control distribution of films and projectors simultaneously. In the second place, the custom of exhibitors to use films of several producers would probably have prevented a stipulation to the effect that sound films manufactured by one process could be used only with projectors licensed under that system. And finally, it is probable that any attempt to monopolize all types of sound equipment under Western Electric control would have resulted in federal action. Hence, interchangeability was permitted.

On the other hand, RCA Photophone, Incorporated, and its parent companies, the Radio Group, arrived on the market too late to secure extensive distribution for their licensed machines. As a result, the Radio Group decided to enter the motion picture industry as producers, distributors, and exhibitors of sound motion pictures. This decision was most significant. It naturally raised the question as to what the future connection between Western Electric and the motion picture industry is likely to become. The aggressive and businesslike methods of the Radio Group applied to the motion picture industry have already effected certain definite changes in the type of executive management. There is less of the old "showman" apparent and more of a systematized method in prospect for governing the whole business



of producing, distributing, and exhibiting pictures. The electrical interests, moreover, have brought strong financial backing to the industry. In the latter part of November, 1932, however, the Radio Corporation of America, General Electric, and Westinghouse dissolved their far-reaching agreements and complicated intercompany stockholdings. Immediately thereafter, the United States Government withdrew the antitrust suit which the Department of Justice had had pending against these and other important corporations.

The patent situation is still considerably involved. Exhibitors are allowed to use any type of equipment which gives adequate sound reproduction, although it is within the discretion of the licensee to determine whether or not satisfactory reproduction exists. Numerous suits and counter suits have been filed, one of the most significant being that of Fox and Tri-Ergon. In the latter part of 1932, there were on file in the United States District Court at Wilmington, Delaware, 16 suits growing out of patent claims which involved leading motion picture and radio companies. Some decisions have been handed down, but the status of these rights as between the alleged owners of the patents is still far from clear.

## CHAPTER II

### ORGANIZATION

WITHOUT a knowledge of present-day organization, it is obviously impossible to gain any reasonable comprehension of the current problems of the industry or to evaluate intelligently the factors involved in their solution. It is probably needless to suggest that any such description is likely to become antiquated almost before it has been completed. While it is true that all industries are undergoing constant change, the rate of change is much greater in some instances than in others. Up to the present, there has been no industry in which development has been more rapid than in the motion picture industry. No one can foretell what the ultimate form will be, yet it is probably true that the changes are likely to be somewhat less radical in the future than they have sometimes been in the past.

This temporary semblance of stabilization makes it possible to sketch the structure within which the industry conducts its business. In describing this organization, one is confronted by two more or less distinct types of problems: The first aspect of the organization picture is that which is related more or less to the internal organization and operation of the motion picture industry. While taking cognizance of the allied fields, this point of view must stress primarily form and organization within the motion picture field itself. The other aspect deals with the relation between the motion picture industry, in the narrower sense of the production, distribution, and exhibition of pictures, and the allied interests, essential though auxiliary. At times these auxiliary connections represent interests whose major concern is not related to motion pictures. For example, the American Telephone and Telegraph Company does have

a very real connection, through certain of its subsidiaries, with the production and distribution of sound-recording and reproducing equipment, although clearly its major interest as a public utility lies in the field of services related to communication.

Roughly speaking, the industry may be divided into the three major aspects of production, distribution, and exhibition.<sup>1</sup> Production may be said to cover all the steps up to and including the completion of the requisite number of positive prints. Distribution activities relate to the rental of films to exhibitors, the "dating in" of the pictures, the physical distribution of the films, and the collection of the amounts due. Exhibition obviously relates to the problem of securing films and to the various other problems of theater management.

According to the United States Bureau of the Census (Census of Distribution), there were in 1929 approximately 142 motion picture establishments in the United States as compared with 127 in 1921 and 132 in 1925. There were 40.84% of these establishments, producing 70.28% of the total output, located in California; 21.12% of all plants, producing 23.83% of the total production, were located in New York State. These 142 establishments produced films "valued, on a production cost basis, at \$184,102,419. These producing establishments, commonly known as studios, carried on their pay rolls 19,639 people, of whom 37 were proprietors and firm members, 8,818 were salaried officers and employees (including actors) on the pay rolls on or about December 14, 1929, and 10,784 was the average number of wage earners for the year. Of the total pay roll for the year, the salaried officers and employees received \$60,-167,520, and the wage earners received \$24,860,092. Thus, salaries constituted 32.68% of the total cost, the lar-

<sup>1</sup> It should be borne in mind that the present discussion is not designed to bring out the problems involved in these various aspects of the industry, but rather to provide a background for those not familiar with it; the particular problems will be discussed elsewhere in this volume.

gest single item of expense; wages were 13.5 per cent of cost; and materials, fuel, and purchased electric energy amounted to 20.88 per cent of the total cost of production." Of the total cost value "\$128,496,710 consisted of negative films, the remainder comprising unfinished productions, the development of positive films, receipts for laboratory work done for others, receipts for use of studio facilities, and other work done for others. No less than 92.39 per cent of the value of all negative films was in theatrical pictures (both feature pictures and short subjects), in which but 13.06 per cent was in silent pictures."

The organization of the production department for a typical company may be seen by reference to Exhibit 4, which indicates the organization for production of the Paramount Publix Corporation as of the first part of 1929.<sup>2</sup> Smaller companies obviously have a much less elaborate organization, but usually the same general outline is followed.

The production organization of the Paramount Publix Corporation is designed to effect the maximum amount of flexibility. Directors, as a rule, are free to proceed unmolested with their respective assignments. Supervision by associate producers is of an advisory nature; it is of little importance in productions assigned to outstanding directors. Studio cabinets, consisting of the studio production manager, assistant production manager, directors, supervisors, and studio executive manager, hold weekly meetings to discuss the current problems of the various productions. In this manner each picture benefits from the ideas of all production officials. As a rule, the vice president in charge of production is present each week at either the studio cabinet meeting on Long Island or the one in Hollywood. It is his

<sup>2</sup> The material dealing with the Paramount Publix Corporation is taken from *Motion Pictures* by Howard T. Lewis, Harvard Business Reports, Vol. 8 (McGraw-Hill Book Co., 1930.) The present production organization does not correspond exactly with the description here given.









duty to coordinate the production function with the other major functions such as finance, distribution, and exhibition.

Story departments are maintained both at the home office in New York City and at the Hollywood Studio. They are operated as separate units, although the former, because of its proximity to the theatrical, book publishing, and style center, is considered first in line of authority.

The story departments obtain information and maintain records of current, past, and future stories, magazine articles, plays, poems, and all other material that might be used as plots for motion pictures. The department managers make contacts with publishers, writers, playwrights, and composers and endeavor at all times to have current knowledge of matters pertaining to the literary world. To facilitate the proper selection of material, it is necessary for them to understand the story requirements of motion pictures, the censorship laws of the several states, and in particular the type of plot best suited to each Paramount actor, actress, and director.

The story department maintains separate readers to glean material for motion picture plots from magazine stories. Generally magazine articles are made available to motion picture producers in advance of publication; to be of value as a motion picture plot it is necessary that a serial story be made available long before the last episode appears in a magazine. Additional material is secured from "fan" mail, actors, actresses, directors, company employees, especially those holding important positions in the production departments, and from numerous other voluntary sources.

The two units of the story department submit briefs of all reviewed material to the studios once each week. It is also customary, because of the lack of literary facilities in Hollywood, for the New York division to supply the California studio with the reviewed books and articles. If the production heads at either studio are interested in the briefs, the story is studied in detail and a rough script, or motion picture version, is prepared by an adapter. If the script is

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approved, it is edited and usually submitted to the Motion Picture Producers and Distributors of America, or some similar organization, for censorship. In some cases censor-

## EXHIBIT 5

### Record of Story Materials Purchased by Paramount Publix Corporation

#### Record of Owned Properties Assigned \*

Date Acquired	Assigned to	Cost	Total
	Title		
	1 Title	\$ 3,000	
	2 "	2,000	
	3 "	5,000	\$ 10,000
	Author		
	etc.	etc.	etc.

#### Record of Owned Properties Unassigned †

Date Acquired	Title	Amount	Total

#### Advance ‡ Accounts of Originals to Writers

Name of Author	Option	Amount

\* Authors' contracts to write stories listed under their respective names.

† Catalogued stories of which no assignments have been made.

‡ Advances against future stories, or stories in process.

ship is not considered until after the story rights have been purchased. After approval of a story, a price limitation based on the executives' opinion of the motion picture value of the story is set, and the legal department is instructed to complete the purchase. In acquiring story rights, careful consideration is given to copyrights and to pictorial, pub-

lishing, dialogue, and musical rights. Finally, the script is either assigned for production or catalogued for future use. Exhibit 5 shows the form of record kept for all story materials purchased.

All catalogued materials are frequently revaluated by the committee in charge. Amortization is based upon the various executives' opinions of each script's worth as a motion picture plot. Scripts of questionable production value are inventoried at \$1 each.

The home office is supplied with a summary record of all players working on flat salary contracts. This record, shown in Exhibit 6, is known as the Stock Company List. It is re-

EXHIBIT 6  
Stock Company Record Kept by Paramount Publix Corporation  
Stock Company List \*

Available Players			
Name		Name	
Players at Work			
Artist	Present Assignment	Next Assignment	Date of Next Assignment

\* The studio record contains additional information on such matters as the date set for completion of the present assignment and estimated number of days that the next assignment should be in process.

vised currently by means of telegraphic advice from the California studio. All stock players are retained in Hollywood, but are transferred temporarily upon request of the Long Island studio. Stock players, as a rule, are well-known character actors.

A separate record is kept for high-salaried stars not classified as stock players. That record contains information on an actor's present occupation, on the time of his availability for the next production in which he will take part, and on the title and starting date of that production. All assignments are made approximately one month in advance of the date designated for starting actual production. This precaution is taken to prevent delays arising from changes in assignments caused by such uncontrollable factors as outbursts of temperament on the part of actors.

The report on directors under contract serves the same purpose as did the Stock Company List and the report on high-salaried stars. The form of this report is shown in Exhibit 7. It is revised every 10 days because, as a rule,

## EXHIBIT 7

## Record of Directors Kept by Paramount Publix Corporation

## Report of Directors under Contract

Name of Director	Title of Production in Process	Start	Title of Next Production	Start

changes in directorial assignments are numerous. These changes, however, rarely occur after a production is in actual process. All directorial assignments are made at least 30 days prior to production.<sup>3</sup> Directors' salaries, in 1929, ranged from \$100 to \$750 a week and upward.<sup>4</sup> In general there has been a reduction in directors' salaries since 1929.

Like its competitors, the Paramount Publix Corporation

<sup>3</sup> Immediately following the introduction of sound, there was considerable discussion in some of the producing companies as to whether or not two directors, one a dialogue director and the other a pictorial director, should be used instead of one director for dialogue pictures.

<sup>4</sup> See *Motion Picture Almanac*, 1929 edition, p. 111.

uses various contracts for actors, actresses, and directors. Some contracts stipulate a certain salary for one picture, others a salary for a series of pictures, and still others a stated weekly salary to be paid on the basis of the ratio of the number of hours in which the particular actor is actually employed in a week to the total number of working hours in the week. All stock actors are paid on a flat salary basis.

Aside from contracts for single pictures, those of the Paramount Publix Corporation are in general for six months' duration with subsequent options at the expiration of each six months' period for five years. Usually, five-year contracts stipulate definite salary increases operative at each

EXHIBIT 8

Contract Record Kept by Paramount Publix Corporation

Artist	Present Salary	Future Salary at Next Option	Date of Next Option

renewal; that clause, however, is not an essential requisite. If for any reason the company should not elect to take up its option, the contract automatically becomes inoperative and the actor becomes a free agent. The actor does not have a similar privilege of rejection. The longest straight contract is for twelve months.

In general all salaries, regardless of position, are paid weekly. Extras, temporary electricians, and others not under contract are paid daily.

To keep first-hand information available for executive use, complete lists are tabulated and brought up to date frequently on all contractual information having to do with the actor roster. Separate forms, such as that illustrated in Exhibit 8, are made out for stars, stock company, directors, writers, and musicians.



Production executives and other executives holding important positions are placed under irrevocable five-year contracts. To insure against their resignation within that period of time, their salaries for the full five-year period are placed in escrow. This unusual precaution is taken because of a realization of the importance of executive positions in the motion picture industry and especially because of an appreciation of the value of assured loyalty.

Included among the more tangible materials of production are such items as sets, costumes, general studio supplies, raw film stock, cameras, sound equipment, etc. In general the purchase and maintenance of these materials are supervised by the studio executive manager, whose duties pertain principally to the business aspects of production.

The art department, which operates in close conjunction with the directorial staff, has charge of the making of all sets necessary for the production of pictures. It is equipped and prepared to design an unlimited variety and number of structures. The functions performed are carpentering, painting, plastering, model-making, and wall-papering.

The property department performs the function of supplying all decorative furniture and a large supply of heterogeneous small articles. A corps of experienced employees is maintained to purchase and to construct the articles required. They are assisted by a research division, which maintains a library of volumes dealing with types of furniture, costumes, and designs of all periods of history.

Mechanisms required for illuminating purposes in both indoor and outdoor photography are maintained in the electrical department. A great many scenes are taken under artificial lights whether the work is done by day or by night.

The costume department functions much in the same manner as does the art department. The studio wardrobe requires a large and ever-changing supply of clothing of all kinds and of jewelry.

The photography department maintains a number of



expert photographers and keeps in stock cameras of all types.

Raw film stock, unless in natural color, is purchased along with regular supplies. Natural color film and its accessory camera equipment, as well as sound recording equipment, require special contract agreements.

As a general rule the Paramount Publix Corporation plans its production about the first of April. The general manager in charge of distribution states the number of pictures desired for the coming year. He bases his estimates on his own and his associates' opinions in regard to the number of pictures which can be distributed profitably by the company.

Upon determination of the distribution department's requirements, the studio cabinet operative committee, which comprises the chief production executives, maps out the production program, its classification and total cost, and the material content and cost of each picture. These data are submitted to the president for recommendations and approval. While neither the manager in charge of distribution nor the president of the Publix Theaters Corporation, the company's subsidiary theater operating company, is entitled to vote on final decisions, their opinions regarding the submitted program and their recommended changes are influential in the drawing up of the final program.

Feature motion pictures in general are either program or special pictures. Specials are generally the more important productions, some even warranting roadshowing. Either a program picture or a special may or may not be designated as a starring production, according to whether or not it is cast with a star of great box office value. A separate group at one time contained silent pictures which had a few talking sequences. By 1929, however, because such pictures had practically disappeared from the market, this subclassification was not used. Exhibit 9 shows how the Paramount Publix Corporation, then called the Paramount Famous

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Lasky Corporation, presented its 1929-1930 program for distribution.

## EXHIBIT 9

PRODUCTION PROGRAM OF PARAMOUNT FAMOUS LASKY CORPORATION  
FOR 1929-1930, AS CLASSIFIED FOR DISTRIBUTION

Paramount Productions (36)	Paramount Personalities (29)	Paramount Short Features
Harold Lloyd*	3 Charles "Buddy" Rogers	52 Paramount Sound News
Moran and Mack	2 Maurice Chevalier	104 Paramount Silent News
The Marx Brothers	3 Gary Cooper	<i>Two-reel Shorts</i>
The Dance of Life	1 Richard Dix	24 Christie Talking Plays
Mysterious Dr. Fu Man-chu	2 Jeanne Eagels	6 Paramount Talking Comedies
The Vagabond King	3 Richard Arlen	—
The Love Parade	3 Nancy Carroll	30
Glorifying the American Girl	4 William Powell	<i>One-reel Shorts</i>
The Four Feathers	4 Evelyn Brent	32 Paramount Talking Singing Acts
Illusion	2 Ruth Chatterton	12 Screen Songs
The Virginian	1 Hungarian Rhapsody	6 Talkartoons
Applause	1 Soul of France	—
The Children		50
Greene Murder Case		
Sweetie		
4 Clara Bow		
4 George Bancroft		
Pointed Heels		
Return of Sherlock Holmes		
Escape		
The Lost God		
Woman Trap		
Charming Sinners		
The Lady Lies		
Behind the Make-up		
Youth Has Its Fling		
Fast Company		
Kibitzer		
Sarah and Son		
The Gay Lady		

\* Produced by Harold Lloyd Corporation. A Paramount release.

To facilitate production and release control, the company's 1929-1930 program was segregated into four divisions known as Personality Pictures, Commander Specials, Leader Specials, and New Show World Specials. Personality

Pictures were the least costly. Their individual budgets were based on a statistical knowledge of the starring artist's value as a box office attraction. Where more than one Personality production was assigned to a star, a total budget was computed from the individual picture estimates. In such cases, the control department was interested only in the total amount, and as a result some pictures profited at the expense of others. There was a wide range in star salaries; it was estimated in 1929 that the average star received \$2,500 a week while working.<sup>5</sup> Three or possibly four Personality Pictures represented the maximum number assigned to any one star. Stories for these pictures were selected currently, and in many cases were written by the scenario department especially for the assigned artist. Personality Pictures were scheduled as illustrated by Exhibit 10.

EXHIBIT 10

SCHEDULE OF PERSONALITY PICTURES KEPT BY PARAMOUNT PUBLIX CORPORATION

Personality Pictures

Number of Pictures	Units	Starting Date	Budget	Total
3	Gary Cooper			
	1			
	2			
	3			
2	Richard Arlen etc.			

Commander Specials ranked third in quality and cost of production. As a rule the stories for these pictures were secured before the beginning of the production season. The casts of Commander Specials did not contain high-salaried stars; generally they were made up of well-known featured players, none of whom was advertised as the particular attraction. The average featured player earned \$750 per week while working.<sup>6</sup>

<sup>5</sup> See *Motion Picture Almanac*, 1929 edition, p. 111. In general, the salaries paid stars are less than they were in 1929; see p. 118.

<sup>6</sup> See *Motion Picture Almanac*, 1929 edition, p. 111.

Leader Specials were the company's highest-quality regular feature pictures and often were given extended-run exhibition. All stories for Leader Specials were selected and assigned, and in some cases were in process, prior to the production season. Sometimes such important players as George Bancroft and Nancy Carroll were featured in conjunction with an all-star cast. In others, the title of the story predominated, and the cast of stars was featured as of secondary importance. Because of the impossibility of accurately measuring public opinion, Leader Specials were known to have exceeded more costly pictures in total box office receipts.

## EXHIBIT 11

Form of Cost Summary of Productions Kept by  
Paramount Publix Corporation

Number of Productions	Classification	Total Cost	Average
	Personality Pictures Commander Specials Leader Specials New Show World Specials		
Total			

Total Cost (not including New Show World Specials\*) .....

Average Cost (not including New Show World Specials\*) .....

\* Because of their production costs and greater exhibition value, New Show World Specials are not included in the general average costs.

New Show World Specials were the Paramount Publix Corporation's extended-run pictures that commanded \$1.50 and \$2 admission prices when prereleased for roadshow purposes. "Glorifying the American Girl", a Ziegfeld production, assigned to a high-salaried director, cast with all-star players, and staged on an elaborate basis, was typical of this type of picture. In that particular case, the use of Ziegfeld's name represented a large cost in itself. Because New Show World Specials required extensive preparations, as a general rule their production was started before the opening of the regular production season.

For control purposes a summarized cost statement, the form for which is illustrated in Exhibit 11, is compiled for all four classifications.

Immediately following the approval of the production program, the studio cabinet prepares a tentative release schedule for the first six months of the new theatrical year. Such a schedule is shown in Exhibit 12. This schedule is limited to six months because of the following considerations: current changes in public demand; unavoidable production substitutions; the possibility of acquiring rights to some current story or stage play success for immediate production; the general consensus of opinion that a more extended schedule would be unwise; and finally, the probable introduction of new devices for the production of motion pictures.

EXHIBIT 12  
Tentative Release Schedule Used by Paramount Publix Corporation

Date \_\_\_\_\_

Starting Date	Prerelease Date	Production Number	Title of Production	Director	Cast	Remarks
		Current year: numbers beginning with # 1				Current reports on each production that should be made known to the executive staff.

Tentative release schedules are used to inform the general production manager of changes in release dates as they occur from time to time throughout the year. These enforced changes, which are not uncommon, are the result of unavoidable production delays.

Approved tentative release schedules are put into final form after all changes have been definitely decided upon. As a rule, changes in the final release schedule occur in one out of ten pictures. Since these changes affect the entire mechanism of distribution and exhibition, it is necessary for



the production department to fill in vacancies by substitution. Substitute pictures are always available. They are derived from productions finished ahead of schedule, pictures filmed before the production season, and roadshows not yet released for regular distribution.

Final release schedules, such as that shown in Exhibit 13, are sent immediately to members of the distribution department, to production executives, and in some cases to managers of Publix theaters and other theaters.

Short subjects are also listed on a schedule similar to that illustrated by Exhibit 13. Generally they require less than

EXHIBIT 13  
Final Release Schedule Used by Paramount Publix  
Corporation

Final Release Schedule						1st Quarter		
Release Date	Production Number	Kind of Picture	Syn-chroni-zation	Sound	Production Title	Director	Cast	Date Booked
1st Quarter								
Sept.	Cumulative total dated back to the company's origin.	musical score or all-talking.	Dialogue, musical, etc.	On film or on disc.				
Oct.		Sound version only, and sound effects,						
Nov.								

Preceding Schedule No..... Date issued.....  
Replaced by this Schedule No..... Date issued.....

one week for production. Consequently, their release dates are determined in final form without recourse to a tentative schedule.

Paramount pictures are released on an average of one each week, with two released during one week in every four. This system does not always operate as planned, but as a general rule changes are infrequent. During the 1929-1930 season every fifth picture released by the company was a costly special.

This large number of expensive pictures was a direct result of the advent of talking pictures and the subsequent availability of stage stars, stage plays, musical comedies, and operettas. To insure its position in the motion picture industry, the Paramount Famous Lasky Corporation, as well as its competitors, purchased numerous stage successes and procured famous stage actors at high salaries. In the opinion of many of the company's executives, the production of a large number of costly specials is unwise. They believe that the market cannot absorb so many costly cinemas, and that as a result none of them will return the maximum possible income. At the present time, therefore, the number of this type of production has been reduced. Musical comedies and operettas, which are expensive to produce, are being used sparingly.

Because of the time element in musical pictures, immediate production and release are necessary for them. The time element is not so important in the case of dialogue plays; since the stage actors are under contract, however, the company cannot afford to delay production. It might withhold release of its dialogue pictures until a more opportune time, but in so doing it would risk the possibility of obsolescence due to the introduction of new devices. Furthermore, it would tie up large sums of working capital.

In addition to the release schedules for the first six months or first two quarters of the theatrical year, the studio cabinet prepares a tentative release summary for each of the four quarters. This schedule is based on the entire year's

production and is concerned primarily with the total number of pictures allocated to the various seasons. Because of the inadvisability of releasing the best-quality feature pictures during late spring, summer, and early fall, however, consideration is given also to the type and classification of each picture.

Careful allocation of such prerelease productions as New Show World Specials is not necessary. The company controls a sufficient number of extended-run theaters in the New York theatrical district and in Los Angeles, California, to provide all necessary theater facilities for these pictures, even though their exhibition dates should overlap.

As a general rule, box office receipts vary during the four seasons of the theatrical year. The first quarter, including September, October, and November, is fair, gaining momentum in late October. In the winter season, receipts are greatest. In the early part of the spring season, receipts equal those of late fall; in the late spring, they are approximately the same as in September. The summer season usually is the least profitable. In 1929, however, the introduction of talking pictures, a decline in the popularity of legitimate plays except in New York City, and the widespread use of air-cooling in theaters forecast a leveling out of box office receipts. With this fact in mind, production officials of the Paramount Famous Lasky Corporation diverged from the usual practice of varying the number of releases according to the season of the year. At the present time the tendency is to level out the releases over the year. Tentative quarterly release schedules can be changed without seriously affecting the mechanism of distribution and exhibition.

The production process of a picture usually begins with the directorial assignment about 30 days in advance of the date set for starting actual production. Upon assignment the director, in conjunction with the casting, art, and sets departments, selects respectively the cast, locations, and sets. When possible, Paramount contract actors are given first preference in casting. At the same time a scenarist prepares the

script in final form, making all necessary additions and corrections, determining the number of sets to be used, the amount and text of the dialogue, the number of titles, the musical scores, and the general pictorial effects.

Since the introduction of sound, all Paramount actors, regardless of their experience, have had to submit to a thorough voice diagnosis, known as the "screen-voice test". This process is expensive but necessary, in order that the company's production officials may have a complete knowledge of all prominent players' voices, as well as of their camera possibilities.

Subsequent to the directorial assignment for a picture, the studio production manager appoints an associate producer to supervise the making of the picture, and the studio executive manager appoints a business manager to take charge of the business aspects of his assigned pictures. These two, together with the director, decide upon a definite production schedule and draw up detailed budgets, the total of which shall not exceed the amount allocated to that specific production.

Dialogue parts are usually assigned immediately after the cast has been selected. Rehearsals, which begin one week in advance of the date set for starting production, are held again on the sets just before the shots are taken. Rehearsals were not the customary practice before the introduction of synchronization.

In arranging the schedule, plans are made at the same time for taking both indoor and outdoor shots. This precaution is taken to insure progress of the picture against inclement weather. Schedule delays cost between \$5,000 and \$10,000 a day, the average cost being \$8,000. The more difficult scenes are assigned to the last stages of production. To avoid waste in time, the scenes in which high-salaried actors appear are arranged in sequence.

In the production of a motion picture, pictures of each scene are made from two or more perspectives. Often different types of cameras are used in order to reduce the risks

due to errors in the judgment of the directors, photographers, or actors. After each day's work the negative is taken to the laboratory for development. After the negative has been developed and dried, it is carefully polished by hand and inspected for defects. A print is made from the negative as soon as possible, in order that changes suggested by the director, supervisor, or other members of the production department may be made before the sets and other effects have been dismantled.

## EXHIBIT 14

Weekly Production Control Report Used by Paramount Publix Corporation

Studio Negative Cost	Story	Home Office Overhead	Actual Cost to Date	Estimated Finished Cost	Budget	Weeks in Process
Comprises all studio expenditures, including studio overhead to date.	Cost Price or Book Value.	A flat percentage of the total actual cost.	Cumulative weekly cost.	Varies each week. Estimates given each week to take care of conditions that have affected the total cost.		

Upon the completion of a production, the director and his assistant, in conjunction with the cutting department, assemble the negatives in continuous form in approximately the order in which they finally are to be arranged, trimming them to the desired length and, if necessary, inserting temporary titles. The negative is then "light tested" and one copy taken off, which is known as the "answer copy". The answer copy is projected, and upon approval of it by the director, his assistant, the supervisor, and other members



of the production department, the negative is pronounced ready for positive printing and subsequent distribution.

Dating from assignment and continuing through production, all directors and supervisors attend the weekly studio cabinet meetings. Each director reports on the progress of his production, the difficulties faced, the coordination of the production schedule with the budget, and any contemplated changes, as well as on various other details. The problems are discussed by the group as a whole, and ideas are exchanged among the several directors and supervisors. Detailed reports of these meetings are retained by the studio production managers for their respective groups and by the general production manager for both studios. In addition, a statistical report, such as that illustrated in Exhibit 14, is prepared for the home office.

In addition to the weekly report, daily wires are sent from the California studio to the home office, and vice versa. As a rule they are night letters of from 100 to 1,000 words. They contain information concerning stories, script, artists, costs, transfers, release dates, substitutions, and all information and requests which should be made known immediately to the designated official. The general production manager retains copies dated back two weeks. Inasmuch as the general production manager visits the Long Island studio frequently, daily reports from that studio are not required.

In order that the company's executives may have a bird's-eye view of the current financial status of production, they are furnished with weekly summary reports giving cash disbursements for each feature picture, and total expenditures for all feature pictures. Such reports are sent from the Hollywood studio and from the Long Island studio. Separate expenditure reports are submitted for short subjects, which are produced only at the East Coast studio.

An estimated final cost schedule, shown in Exhibit 15, presents a detailed report of expenditures of individual pro-

ductions as contrasted with their respective established budgets.

## EXHIBIT 15

Estimated Final Cost Schedule Used by Paramount Publix Corporation

Release Date	Production	Estimated Final Cost	Budget Allowance	Over	Under
1st Quarter					
2nd Quarter					

Average Cost		
Average Budget	Number Productions	Amount
Average Over	.....	.....
Average Under	.....	.....

Half-year summaries list the actual results without reference to the expected results. Half-year summaries for the previous four years are made available for current use by the general production manager.

Current records of receipts from pictures are maintained for executive use. These records serve as guides regarding public opinion and, as such, regulate production. Exhibit 16 shows a record of profit, giving a comparison of the total negative cost of pictures with the actual receipts from those pictures. Exhibit 17 gives the form used for a summary of rentals by groups of pictures and by individual pictures.

According to the United States Bureau of the Census in 1929, there were 143 establishments, including both studios and laboratories, producing motion pictures in this country. Such of these production units as were engaged in making pictures for the theatrical trade appear to have been operated by 46 producing companies.

Substantially the larger proportion of the pictures produced up to the present have been made at Hollywood. The

problem of the production of pictures on the East Coast is one which will be considered later on in this discussion but which for the present need not concern us. Around this

40- 24949

EXHIBIT 16

Profit Record Used by Paramount Publix Corporation

Record of Profit  
Cash for Negative  
Comparison of Actual with Receipts

First Six Months			
Week Ending	Weekly Budget	Cumulative Actual Receipts	Difference, Gain — Black Loss — Red

EXHIBIT 17

Rental Summary Used by Paramount Publix Corporation

Summary of Rentals by Classes of Pictures

Group	Cumulative to First Full Month	May	June	July	Aug.	Sept.	Total to Date
Personalities							
Commander Specials							
Leader Specials							
New Show World Specials							

Summary of Rentals for Individual Pictures

Picture	Cumulative to First Full Month	May	June	July	Aug.	Sept.	Total to Date

major task of producing pictures, there have grown up also certain affiliated organizations. Thus there are approximately five distributors <sup>7</sup> of raw film stock, nearly a hundred casting agencies, a substantial group of insurance brokers

<sup>7</sup> Including such concerns as the Eastman Kodak Company, the DuPont-Pathé Film Manufacturing Corporation, and the Agfa Ansco Corporation.

supplying various forms of motion picture insurance, laboratories,<sup>8</sup> play and story brokers, storage companies, and numerous other companies such as title studios, costumers, camera dealers, film laboratories, and lighting specialists.

As has already been indicated, distribution relates to the rental of films to the exhibitors, dating in of the pictures, physical distribution of the films, and the collection of the amounts due. The organization created for the proper performance of these functions is naturally extensive. Considering the character of the work to be done, however, it is not unduly complex. No better understanding of what is involved in the task of distributing pictures can be obtained than by describing the organization of a particular company. For this purpose the sales organization of the Pathé Exchange, Incorporated, as of 1929, may be cited. While it is true that this company was acquired in January, 1931, by the Radio-Keith-Orpheum Corporation, this transfer of control does not affect materially the value of this illustration for our present purpose.

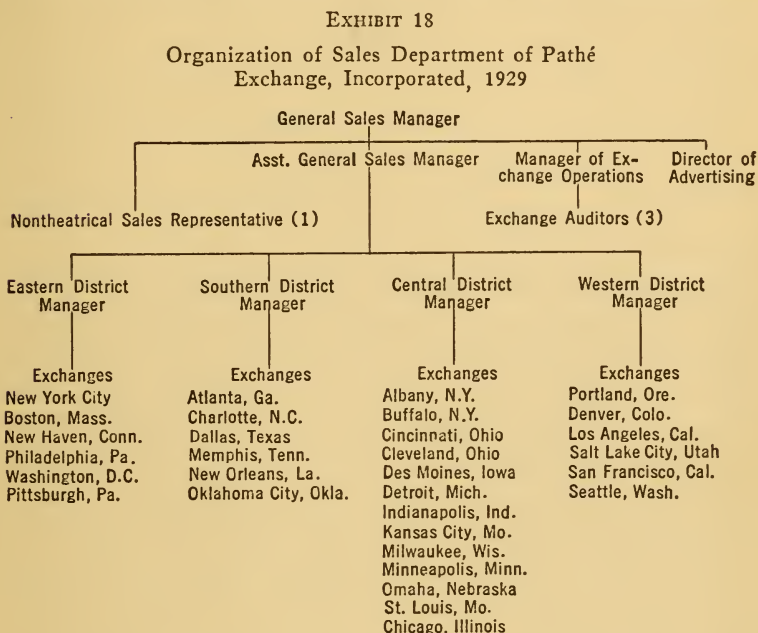
The Pathé Exchange, Incorporated, operated a national exchange system with branch offices, called exchanges, in 31 key cities of the United States. Foreign distribution was carried on by subsidiaries of the company, except in Canada, where Regal Films, Limited, distributed Pathé pictures. The offices of the sales department were located at the executive headquarters in New York City.

In addition to its own product, the company distributed films of other producing companies on a percentage arrangement, usually receiving 30% to 40% of the gross revenue.<sup>9</sup> The company was also the largest American distributor of films of educational value to the nontheatrical market. The company's gross sales, in 1928, were approximately \$18,000,000.

<sup>8</sup> Including such a concern as Consolidated Film Industries, Incorporated.

<sup>9</sup> The product of one outside producer was not commingled with that of another outside producer or with Pathé product, but was sold independently as individual pictures or as groups of a given series.

The organization of the sales department of the Pathé Exchange, Incorporated, was as is shown in Exhibit 18. The general sales manager, located at the home office, had as functional assistants an assistant sales manager, a manager of exchange operations, and a director of advertising.



The assistant sales manager exercised control over the routine selling activities, including the analysis of contract applications, and was available for field work. The manager of exchange operations had direct control of the nonselling activities of the exchanges. In financial matters affecting exchange operations, he cooperated with the comptroller and the treasurer. Three auditors, who were responsible to the manager of exchange operations, visited the exchanges for the purpose of checking the activities of the bankers and the cashiers. The advertising director maintained contact with the exchanges through the manager of exchange operations.

The company's advertising activities included the adver-



tising and exploitation of individual pictures and the general advertising and publicity of the company. The work was divided into such departments as the following: advertising—paid space, outdoor advertising, exhibitor helps, and advertising on theater screens; publicity—news stories and other forms of free publicity; and exploitation—stunts, contests, cooperation of merchants, and tie-ups with music distributors. The company employed an advertising agency.

For purposes of selling, the company had divided the country into four divisions: eastern, southern, central, and western. Four divisional managers located at the home office were responsible for all the selling activities, except those involved in the sale of nontheatrical product, in their respective territories. These division managers were directly responsible to the assistant general sales manager. The sale of nontheatrical films was in charge of a nontheatrical sales representative who, while under the supervision of the general sales manager, was somewhat detached from the organization because a majority of the sales of nontheatrical products were made by special salesmen and by correspondence. Educational films, while sold largely to nontheatrical accounts, were considered a part of the company's regular line and were available for theatrical exhibition.

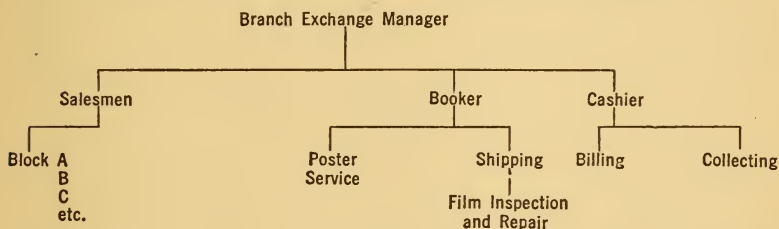
Physical distribution was done from the branch exchanges, which obtained positive prints from the company's laboratories in New Jersey. The activities of an exchange included selling pictures and advertising accessories, booking pictures for exhibition, shipping, inspecting, and servicing films, billing exhibitors, and making collections. These activities were organized into three departments, as shown in Exhibit 19.

Each branch exchange manager was responsible directly to the manager of the division in which his exchange was located. The branch manager was largely concerned with the selling activities of the exchange; in addition to supervising the salesmen, he sold films to the large accounts in the exchange territory. The number of salesmen varied

with each exchange. The company maintained a force of about 130 salesmen during the selling season, reducing that number somewhat during the remainder of the year.

EXHIBIT 19

Exchange Organization of Pathé Exchange, Incorporated



At the beginning of the selling season,<sup>10</sup> a convention was held in Chicago at which sales quotas were assigned by the general sales manager to the several branch exchanges. These branch quotas were broken down by the branch managers into blocks. In this sense a block constituted a certain percentage of a territory and should not be confused with a block of pictures for block booking. A block was assigned to each salesman at an exchange. Each salesman, except those selling nontheatrical pictures, sold the entire line of product in the block assigned to him.<sup>11</sup>

Each salesman at an exchange was furnished with a sales manual and an announcement of the product for the season. A price classification of product and price schedules for posters and accessories were available to the salesmen at the exchange. With this information and a work sheet for each theater, a salesman visited exhibitors to solicit contracts for picture rentals. It was extremely advisable for a salesman to secure satisfactory play dates in addition to

<sup>10</sup> There has been a good deal of agitation directed toward securing an agreement by which distributors would agree to launch the selling season in September rather than during the early summer. A few years ago, this was the common practice, but gradually the time has been put back to an earlier date under the stress of competition. Up to the present, no results have come from this effort.

<sup>11</sup> Before 1928, salesmen had specialized in the sale of features and in the sale of short subjects, comedies, and newsreels in certain territories.

selling the pictures. No contract signed by an exhibitor became effective until it had been approved by the general sales manager at the home office of the Pathé Exchange, Incorporated. Accordingly, each contract obtained by a salesman, accompanied with a contract enclosure embodying the recommendations of the branch manager as to the contract, was forwarded by the manager of the exchange to the home office. The exchange maintained a record of sales for each theater, giving information as to the pictures sold to that theater, the prices secured, and the dates of showing.

Educational films were sold on order blanks which specified the entire product of the department with an agreement to execute a uniform exhibition contract upon preparation and delivery. Advertising accessories also were sold on order with payment on delivery. From nontheatrical account records maintained at each exchange, each salesman received information relative to such accounts in his territory.

Each salesman submitted a daily report on the results of interviews and a weekly traveling expense report for the approval of the branch manager. Salesmen were paid on a straight salary-and-expense basis.

Pathé pictures were sold in groups of varying numbers, depending upon the requirements of the exhibitors and the sales ability of the salesmen. The company endeavored, by all fair and reasonable inducements, to persuade exhibitors to contract for the entire number in the group. While the company never refused to sell an exhibitor less than an entire group of films, it did not permit an exhibitor to make his choice of one or more of the pictures offered in a group at a group average price. In the case of Pathé News, 104 issues, divided into 2 series, comprised the output for a year.

Of the 15,000 or so theaters considered as potential accounts, satisfactory distribution commonly constituted from 6,000 to 8,000 contracts on an individual picture. In presenting the company's product, the salesmen placed short subjects first, because the Pathé Exchange, Incorporated,

was recognized as the leader in this field and because the widely diversified output of these pictures made them adaptable for sale to nearly every theater in the country. After an agreement had been reached on the short-subject product, other groups were presented in turn. It was the policy of the company to sell an entire program of available product wherever possible. Sales of the several classes of product during the 1928-1929 season, in relation to total sales, were approximately as follows:

Superspecials .....	16.3%	of total sales
Programs and Specials .....	34.0	
Westerns .....	1.5	
Total Features .....	—	51.8%
Serials .....	3.0%	
Comedies .....	10.2	
Newsreels .....	20.4	
Other Short Subjects .....	14.6	
Total Short Subjects .....	—	48.2
		<hr/>
Total Sales .....	100.0%	

Pictures were sold on a percentage basis or as flat rentals; in both cases, contracts were made between the exhibitor and the distributor. Sales on a percentage split necessitated daily and weekly reports on box office receipts, with a summary on each contract. The price at which Pathé pictures, except certain short subjects, were offered was established by the adoption of a national quota for each picture, which was in turn broken up into percentages assigned to each branch exchange and further broken up into percentages thereof assigned to each sales district within the territory covered by a branch exchange. From the quota figures, and from the sales manager's, the branch manager's, and the salesman's knowledge of prices which had been paid and thereby had become more or less established for given theaters for the different classes of product, the rentals to be derived from the several theaters in a territory and zone

were determined. Such prices necessarily remained flexible, because in the final analysis the price at which a group of pictures was sold was determined as a result of negotiations between the salesman and the exhibitor in arriving at an average price acceptable for the entire number of pictures taken. Large first-run theaters did not, generally speaking, take pictures in groups. It was the salesman's responsibility to sell as much of the company's product to as many exhibitors as possible at the best prices obtainable. The company's records showed a great variance between the number of contracts taken on the various pictures comprising a group. For example, a popular picture in one group had received approximately 10,000 contracts, whereas a less popular picture had netted only 3,000 contracts.

The work of making arrangements for the playing of the pictures, together with the directing of the shipping and other work in connection with the physical handling of the positive prints, was performed by the booker, who in most instances acted as office manager as well. His department was also responsible for the storing and issuing of advertising accessories such as posters. Sales contracts, with specified dates of exhibition or arrangements to play so many pictures per week, month, or season, constituted his authority for booking a print. A record of bookings contained the necessary information for the shipment of prints. Each of several prints was scheduled for continuous use, with allowance for delivery and return time. It was the booker's duty to keep the salesmen informed as to unspecified play dates in order that the Pathé product might secure an early showing. A delay in exhibition caused cancellations and difficulties in selling new releases. Protection rights of the several theaters in a zone were carefully guarded by the booker. The necessary information for determining such rights was maintained in customers' service records for the product before the current year. Such a record is shown in Exhibit 20.

The control system which the company used provided





standardized forms to be used by the booker in each exchange. At regular intervals the booker sent to each exhibitor a notice of availability which listed the current productions contracted for by the exhibitor and the dates available for choice in exhibition. At the same time the exhibitor was reminded that, according to a provision of the Standard Exhibition Contract, failure to select exhibition dates within 14 days of the notice gave the exchange authority to designate such dates. In the event that an exhibitor failed to exercise his privilege of selection, a designation of play dates was sent to him. Applications for play dates received from exhibitors were confirmed on a special form. Notice of substitution or cancellation was furnished the home office and the exhibitor with the reasons therefor. A copy of each of these two forms was forwarded to the home office, where a record of bookings in each exchange was prepared. In addition, the booker forwarded a weekly report of spot bookings. A special report was required by the home office for immediate information on the play dates booked for a particular release.

As custodian of prints the booker requisitioned new prints, returned films to the laboratory, and maintained vault record cards for each print in storage. Exhibit 21 shows the form used in the requisition of new prints. A monthly report of inventory was sent to the home office. The inspector prepared a daily inspection report, which was submitted to the manager but not forwarded. The shipper prepared a daily report of late returns on films, which was turned over to the manager for decision as to the action to be taken by the booker, and a special report on refused shipments.

In the poster-room of the exchange was maintained a record (by theater) of exhibitors' advertising orders for current product. A monthly report of accessory inventory was submitted by the booking department to the branch manager for his approval; the original was then forwarded



to the home office. Requisitions for accessories were submitted to the manager for approval.

In addition to his duties in connection with billing the exhibitors and making collections, the exchange cashier had charge of the accounting work of the exchange. As part of the company's system of control the cashier was required to submit reports to aid the traveling auditors in checking his work. These reports were specified to be as follows: (1) a weekly statement of business, which included a report of billings, collections, and ledger entries, prepared by the cashier and certified by the branch manager; (2) a daily cash sheet, showing the amounts received on picture rentals with subcolumns for rentals on particular releases; (3) a record of departmental disbursements accompanied by signed vouchers submitted weekly; (4) an employees' salary sheet substantiated by vouchers; and (5) a monthly report of customers' balances prepared from the ledger. All reports were to be approved by the manager. The cashier's department was to prepare also a daily shipping sheet which reported all rentals received and shipments made. All supplies exceeding \$10 in value were requisitioned from the home office; requisitions were approved by the manager.

The company used a system of sales control which made possible close home-office supervision of the exchange activities. This central supervision resulted in a close control over expense with a realization of economies in exchange operation. Large savings were made because of centralized purchasing of supplies. A close control of credit adjustments minimized the number and amount of such credits.

A close control of sales was possible as a result of standardized home office reports. With these reports, the central sales organization was in touch with the field and could direct activities during the sales season; inefficiency was noticeable, and corrective measures could be taken.

In setting up a control system, the executives of the Pathé Exchange, Incorporated, were interested primarily in the realization of sales volume; the routing of salesmen and the

control of sales expense remained largely with the branch managers, who were considered to be in a better position to supervise the visits of the salesmen. The executives desired up-to-date information, however, on contracts, bookings, and play dates which would enable them to instruct and direct the activities of the branches.

The sales in key cities were particularly important in the early season and were watched carefully because of their effect upon subsequent runs. There were estimated to be between 700 and 800 accounts in key cities, cities of more than 25,000 population, in which the initial exhibition of a feature motion picture was given and in which a showing had an additional value to the company from the advertising of the picture. The comparative value of different theaters in a key city varied according to such factors as the location, the size, the entertainment policy, and the management. Generally speaking, the longer the period of exhibition in an important first-run theater in a key city, the greater was the value of such exhibition to the Pathé Exchange, Incorporated.

Under the system of control, a special book register was prepared for recording the contracts, bookings, rentals, and play dates in the key cities. The cities were listed by branch territories, and first-run contracts were recorded as obtained. The record for each city showed the theaters operating, the classification as to run, the seating capacity, past rentals, and other data on the competitive situation. With this record the sales executives were enabled to direct the efforts of the division managers, branch managers, and salesmen towards the strengthening of the company's position in this important part of the market.

Potential accounts in each territory were maintained in card form. Similar records were maintained at each branch. Contracts, as approved, with data relative to rentals, runs, and playing arrangements, were posted to the card accounts as received. This record disclosed sales possibilities, thereby furnishing a basis for instructing the branch manager as to





"open spots" in the territory. The card records and the special register were kept up to date by a force of clerks working under the supervision of the assistant sales manager.

Branch sales control was facilitated through the use of a master control card showing the product sold to each theater. With this card, a sample of which is shown in Exhibit 22, the branch manager was in a position to direct his sales-force in the solicitation of a larger share of an exhibitor's screen time.

The clerical force of the sales control section carried on a perpetual follow-up of the accounts as represented by the control cards. Those accounts which showed an apparent falling-off of sales were removed from the index file and referred to the assistant sales manager for attention. The assistant sales manager then requested the branch exchange managers to report on the reasons that the accounts were unsold. Familiarity with the status of the accounts on the part of the control clerk was necessary in order that an effective follow-up might be secured. Information received from the branches relative to the query of the assistant sales manager was noted on the control cards.

In another division another control card was utilized for the follow-up on play dates. This card, shown in Exhibit 23, was prepared and used as a visible index to the sale and exhibition of all pictures produced. One card was kept for each account, and it was possible by a glance at a card to know those pictures which had not been sold to the account, those which had been sold but unplayed, and those which had been sold and played. Postings were made from a copy of the contract, the reports of bookers, and the notices of confirmed play dates. A diagonal line through the special column provided for each picture on the visible portion of the card indicated a contract for the picture, and a second cross-diagonal line indicated a play date obtained. Cancellations were posted in red.

A follow-up of accounts sold with pictures unplayed was

## EXHIBIT 23

Control Card For Play Dates. Used By Pathe Exchange, Incorporated.

KEY NO.		POP.		BLOCK		ZONE		RUM		FRANCHISE																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																													
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made in a manner similar to the follow-up of sales. Exchange bookers were instructed to secure datings for unplayed contracts or to explain the delay on the part of the exhibitor. As a result of the follow-up, applications and confirmations of play dates were received from the bookers. Explanations of failure to receive play dates were noted on the control card. Each month a thorough check of the unplayed accounts was made, and an informal report was made to the manager of exchange operations on the situation in each exchange and on each class of product or particular picture. This information was turned over to the exchange auditors who visited the bookers at the several branch exchanges.

For control purposes, statistical information was taken from contracts and branch reports, was punched on Hollerith cards, and tabulated weekly. The volume of sales for a week ending Friday was available to the executives on the Monday following; two or three days later the cumulative sales records with gross sales, cancellations, and net sales for each picture were ready. Billings and unplayed contract figures for the country were prepared weekly, with a monthly analysis by branch and by picture. Sales expense figures were accumulated from the salesmen's reports and branch exchange managers' summaries.

While the above-described system of control depended in a large measure upon the familiarity of the clerical force with the exchange accounts, it afforded an economical means of maintaining close contact with sales operations. Consideration was given to the possibility of combining the sales and play-date control in a single section with a single index. Because of the variety of product and the large number of pictures, considerable time in posting was required, thereby restricting the time in which the records were available to the executives. The company decided, however, that both control records were necessary.

Taking into consideration a few slight modifications in individual companies, the distribution organization which



has just been described may be regarded as typical of the system used by all the larger distributors except one, the United Artists Corporation. The general organization of this company is such as to make expedient the use of a distribution procedure quite different from that followed generally in the industry.

The United Artists Corporation is made up of a number of independent producing units, each of which delivers its completed pictures to the company for distribution. The total number of pictures produced by these units is somewhat smaller than the number distributed by any one of the other major companies. In 1930, for example, when the average number of productions distributed by the larger companies was about 35, the number distributed by the United Artists Corporation was only 16.

The United Artists Corporation receives, for the performance of the services of a distributor, a stipulated percentage of the gross earnings of a picture. It makes no advances to the producing units against their pictures in process but makes payment to them only out of actual receipts. In return for its commission the United Artists Corporation performs all the services of distribution including selling, advertising, booking of the pictures for definite exhibition dates, shipment of the films to exhibitors, inspection and repair of films, and collection of payments from exhibitors. The payment received from an exhibitor, less the company's commission, is paid to the producer three weeks after the exhibition of the pictures. The producers furnish the company a negative of each picture and 130 positive prints ready for use.

The total amount spent on advertising is determined at the beginning of the year by the company. This sum of money is expended in equal amounts on all the pictures to be distributed. If any producer desires to obtain more advertising for his pictures than can be afforded by the budget assigned to them, he is at liberty to expend his own money for advertising. The company offers the services of its ad-



vertising department to any of the producers who wish to do additional advertising at their own expense.

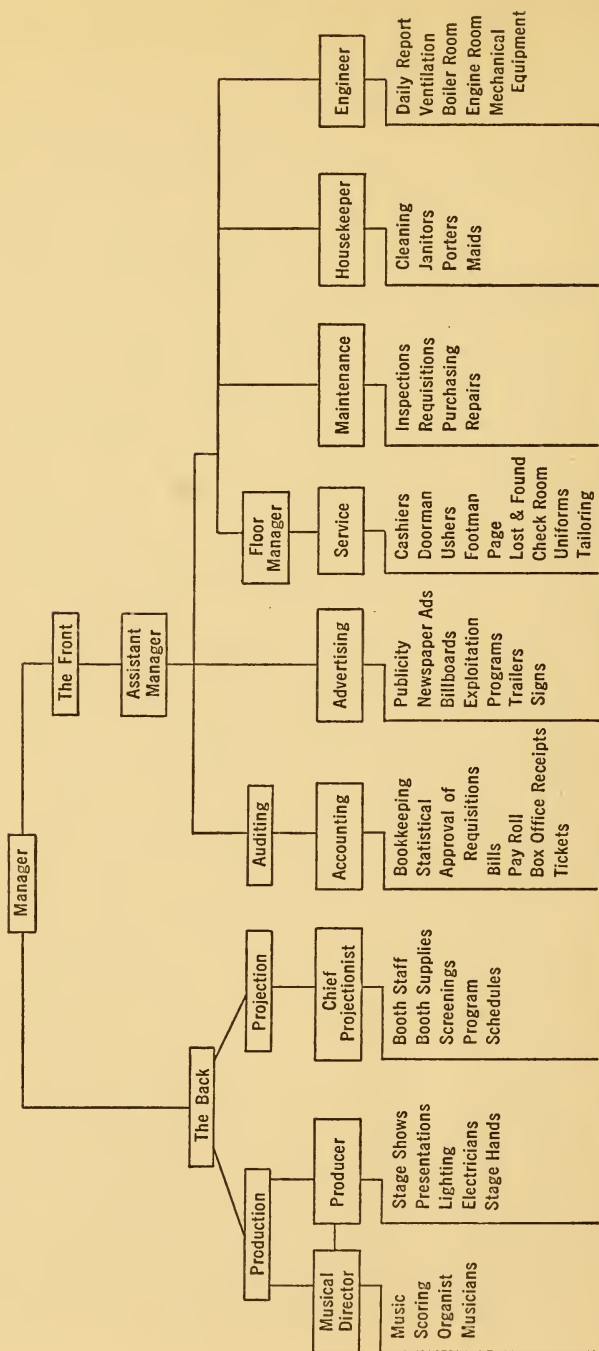
Because of the limited number of productions which the company distributes, it sells its pictures individually. One of the principal reasons for this is that only this method of sale permits an equitable division of the receipts from the sales of the pictures. By selling the pictures individually the company knows the exact amount earned by each picture, thus obviating the necessity for an arbitrary division of the receipts in order to sell the pictures in groups.

Another reason which the company gives for selling individually is that such a method permits special stress on the merits of the individual pictures and enables the company to obtain higher prices for pictures of a given quality than it otherwise might obtain. Inasmuch as the company makes only a few pictures each year and attempts to maintain a high quality, it considers this factor to be of considerable importance.

Thus the United Artists Corporation has a distribution organization which is designed to meet the peculiar problems arising out of an unusual situation. It is able to use a method of individual selling, whereas for other companies the same system might prove quite unsuccessful.

The relationship between the distributor and the theater exhibiting the films naturally raises a series of very important and crucial issues. These problems center around selection of pictures, price, terms of sale, and dating. Important as these problems are, a consideration of them is not pertinent at the present moment, since we are now interested only in gaining a picture of the structure of the industry itself. Neither is it important here to consider certain distinctly theater management problems, such as those relating to labor, local advertising, building restrictions and requirements, and the like. It is necessary only to indicate briefly the typical theater organization, in order that some idea may be gained as to the requirements to be met in the successful management of a theater. In general these may be

# EXHIBIT 24 THEATER ORGANIZATION CHART



Source: Motion Picture Theater Management by Harold B. Franklin. New York: Doubleday, Doran and Company, 1927

classified in two main groups: those relating to the service and business end of the theater, and those relating to what may be termed the back of the house, including those factors pertaining to the entertainment, such as musicians, stage hands, projectionists, and performers. A typical large theater may operate with as many as 10 departments, namely, manager's office, service department, maintenance, housekeeping, engineering, production, projection, musical, advertising, and accounting.

The organization chart, Exhibit 24, indicates somewhat definitely the relationship between these various departments.

Ever since the development of chains of theaters, the problems involving the degree of centralization of control have caused a good deal of concern. A consideration of these issues must be postponed to a later part of this discussion. However, in order to have a reasonably complete picture of the relationships existing between distribution and exhibition, it is important to understand the procedure by which a theater chain procures its pictures. Here again the degree of centralization of authority is a very real issue that has not always been met in the same way by various companies, nor has the same company always followed the same procedure. However, an illustration of the procedure actually followed is necessary.

In 1929, the Fox Theaters Corporation established a buyer in New York City to purchase motion pictures for all Fox theaters. Before that time, the function had been decentralized, in some cases being delegated to the various division officers of the Fox Theaters Corporation and in others to the unit theater managements.

The Fox Theaters Corporation divided its theaters into five divisions, each group operating under the control of a division manager. The five divisions were: West Coast, Midwest, Southern, New England, and Metropolitan New York. Individual theater managers were to operate under

the supervision of district managers,<sup>12</sup> who in turn would report directly to their respective division managers.

The company did not maintain a general theater manager as did a majority of its chief competitors; instead, the activities of the five division managers were coordinated by two regional directors, whose territories were divided theoretically by the Mississippi River. The eastern director had headquarters in New York City; the western director, in Los Angeles. To provide all the benefits of a highly centralized organization, the company rotated the directors as between the two territories.

In general, before the appointment of a general film buyer for Fox theaters, films were purchased by the unit theater managers or their buyers, by division buyers, and in some cases through the cooperation of both. When films were purchased by the individual theater, the transaction from purchase to delivery, although governed in part by predetermined budgets, and to a lesser extent by general company policy, was not unlike the purchases made by individual independent exhibitors. Purchases made for a group or a division were negotiated by a division buyer or a division manager. The division buyer, because of his personal contact with the theater managers in his territory, was well acquainted with the situation of each theater and was therefore able to judge the suitability of each producer's product for specific theaters.

Division sales managers of the various distributing companies usually negotiated with the division buyers for the sale of their pictures to Fox theaters. Unless he was offering his company's product in units, the distributor-representative endeavored to sell to the buyer as many of his pictures for as many of the Fox theaters in his district as possible, and to secure for them a maximum total price. The buyer, on the other hand, usually selected certain pictures and endeavored to purchase them for a minimum price. He

<sup>12</sup> See Lewis, Howard T., *op. cit.*

was guided by an already established theater budget. Although prices were estimated for each theater, both buyer and seller were interested primarily in the aggregate totals. Pricing was made complicated by the use of flat rentals and the resultant bargaining process.

If an agreement was reached between the salesman and the buyer, the seller submitted the proposal to his sales manager, and the buyer submitted the proposal to the theater division manager. If satisfactory to both parties, the transaction was consummated and the project turned over to the various exchanges of the seller and to the division booker for the Fox Theaters Corporation. In some cases the division booker for the Fox Theaters Corporation cooperated with the distribution division manager of the company making the sale and in that way scheduled all play dates, in so far as possible, for the pictures purchased. Copies of the booking schedules were sent to the distributor's exchanges from which deliveries were to be made, and to the Fox theaters booked to exhibit the pictures. In other cases each theater district office maintained its own booker, and the individual theater managers were permitted to express their dating preferences to him. The purchasing by district bookers was coordinated by a division booker or buyer.

The purchase of Fox films by the Fox Theaters Corporation, whether by division buyers or by individual theater buyers, was negotiated in much the same manner as the purchase of a rival producer's product. For obvious reasons, however, the problems of negotiating sales were much less complex, and to a certain extent were governed by company policy.

Although a decentralized control over film purchases had been adequate during the period of early expansion, the company, in 1929, decided to adopt a centralized policy. Since the Fox Theaters Corporation did not operate under a duly appointed theater operator, the general film buyer reported directly to the vice president in charge of distribu-



tion, who was in active charge of the home office of the Fox Film Corporation. The man appointed to serve as film buyer understood thoroughly all phases of the motion picture industry. He was acquainted with each Fox theater, with its box office possibilities, and to some extent with its community problems. Furthermore, he was well versed in the product of all producers and the ingredients which usually constituted the basis of a successful motion picture.

Motion pictures purchased by the film buyer for Fox theaters were derived from three general sources: the Fox Film Corporation, other American producers, and foreign producers.

The purchase of Fox films did not constitute a problem.<sup>13</sup> A committee comprised of the vice president in charge of distribution, the two regional directors, and the film buyer selected pictures, established equitable prices based on individual theater quotas, and made all other arrangements which were mutually satisfactory to the parties involved. Division theater managers had the right to reject certain Fox pictures which they considered inappropriate for exhibition in any one of or in all the theaters in their respective territories. On the other hand, the sales department often withheld the sale of some Fox pictures to certain Fox theaters because it was possible to derive a greater profit from a sale to a rival theater-operating company or because of some previous sales agreement. Fox films, in so far as possible, were booked centrally for each Fox theater. The actual routine and delivery, however, were delegated to the various exchanges of the Fox Film Corporation.

The competing American producers from whom the Fox Theaters Corporation purchased films were of two general types: those who did not own or control theaters, and those who operated theater chains. By reason of this difference in

<sup>13</sup> Several competitors of the Fox Theaters Corporation have experienced difficulties in making purchases from their affiliated distributing companies. Prices, quantity of product, and numerous other factors have been advanced as fundamental causes for this recognized difficulty.

the nature of the two groups, the purchasing procedure used in the two cases necessarily differed. In the purchase of the product of those companies not operating theaters, such as Columbia Pictures, Incorporated, and Tiffany Productions, Incorporated, the procedure followed was relatively simple. A representative of the distributor, usually either a division manager or a ranking sales official, approached the Fox buyer in New York.

The sales representative endeavored to sell all his company's product to all the Fox theaters in his territory. The buyer for Fox theaters, in turn, made his selections, if any, and discussed prices, run, and all factors usually connected with the sale of motion pictures. When an agreement of some sort had been reached, the distributor's representative returned a copy of the agreement to his general sales manager and the Fox buyer returned one to the vice president in charge of distribution. The various theater division managers of the Fox Theaters Corporation were notified of the prospective purchase and instructed to state their approval or objections.<sup>14</sup> If all division managers, the regional directors, and the vice president—and, on the other hand, the chief sales executives of the distributing company—were agreed, the deal was completed. If any complications arose, they usually were adjusted in subsequent discussions; otherwise the transaction was rejected.

In the event of a purchase, the individual pictures were booked for each Fox theater as far in advance as possible. Duplicate copies of the booking sheets and sales arrangements were then sent by the distributor to its exchanges, which were to make the deliveries during the course of the theatrical year. The Fox Theaters Corporation sent similar schedules to its various division bookers, who in turn noti-

<sup>14</sup> Division bookers and buyers, through contact with their district managers and unit theater managers, were in a position to relay to the division manager all important opinions regarding the purchase of product. The company had retained its division buyers to purchase films for spot bookings and other films not on the regular schedule. These buyers also negotiated with the various exchanges for all bookings not scheduled in New York.

fied the district bookers; the latter notified those theaters operating under their jurisdiction which were booked to exhibit these pictures. Although the booking process appeared comparatively simple, in actual practice it was extremely complicated. In considering the process one should bear in mind the necessity of scheduling all purchases made by Fox theaters from the several producers. Naturally, booking is not the duty of the general film buyer, although for obvious reasons it becomes a part of every purchase negotiated by him.

The procedure followed in making purchases from producers operating theater chains is much more involved than in making any others. The purchase of films by the Fox Theaters Corporation from the Paramount Publix Corporation may be taken as an exemplary case. In this instance, a division manager of the Paramount Publix Corporation approached the buyer for Fox theaters, an agreement was reached, and both parties involved submitted their projects for approval. Likewise a sales representative of the Fox Film Corporation negotiated an agreement with the film buyer for Paramount Publix theaters. Before being carried further, negotiations for all divisions of the country had to proceed to the same stage of development.

When the negotiations for the entire country had been concluded both as to the purchase of Paramount pictures for Fox theaters and Fox films for Paramount Publix theaters, the two companies withdrew for intracompany consultation. The Fox film buyer and the vice president in charge of distribution for the Fox Film Corporation considered the prospective purchase of Paramount pictures in the light of the proposed sale of Fox films to Paramount Publix theaters. In the meantime, division managers of the Fox Film Corporation had been notified of the proposed purchase. In the majority of cases these officials remained in New York during the selling season or were represented there by the buyer or booker for their respective divisions.

If the proposed purchase and the prospective sale were

satisfactory to both corporations, the transaction was completed and booking arrangements were then made in the manner already described.

In actual practice consummation of a deal of this sort was a long-drawn-out process. Usually innumerable difficulties arose from all sources involved. For example, division managers might object to certain pictures, knowing from actual experience that these pictures would not succeed in certain theaters located in their territories. Then, too, frequently it was difficult to arrive at an agreeable trade as between the sales departments of both companies involved. Consequently, as a general rule, three and sometimes four weeks or more were required to complete the purchase, for example, of Paramount pictures for Fox theaters.

The trading process did not involve coercion. On the contrary, it was considered both ethical and good business practice for the Fox Film Corporation to insist on an equitable trade with competing producing companies operating theaters. Furthermore, the process often was advantageous to both companies involved, since no one theater operating company possessed enough theaters to insure its affiliated producing company adequate exhibition in all sections of the country; on the other hand, no one producing company produced a sufficient number of pictures to supply all its affiliated theaters.

The purchase of pictures made by foreign producers was principally a matter of company policy based almost entirely on exchange quotas established by the several foreign countries. For example, at one time France required the purchase of one French film by an American company for every four films exported from the United States for sale in France.<sup>15</sup> The buyer, to the extent to which he was acquainted with foreign films, took some part in the selection. Foreign films were sometimes purchased outright. They were more often purchased on flat-rental and percentage

<sup>15</sup> See Chapter XIII.



agreements. The booking of these pictures and their distribution to the various Fox theaters usually were performed by the Fox Film Corporation through its regular channels of distribution.

At the outset of this discussion it was suggested that there are two aspects to the problems of organization: one deals with the more or less internal structure; the other deals with the wider relationship existing between the motion picture business as such and the auxiliary interests. A brief sketch of the high lights in the formation of the Radio-Keith-Orpheum Corporation may serve to indicate some of these relationships.

The formation of the Radio-Keith-Orpheum Corporation began with the development of sound motion pictures. Early in 1928, the Radio Corporation of America, in order to develop and exploit a recently perfected device known as the Photophone system for the recording and reproduction of sound in synchronization with motion pictures, acquired a substantial interest in the stock of FBO Productions, Incorporated, a motion-picture producing and distributing company. The Photophone system, which was manufactured through the combined efforts of the General Electric Company and the Westinghouse Electric Company, was based on patents jointly held by the so-called Radio Group. This group centered in the Radio Corporation of America, large blocks of the stock of which were held by the two aforementioned electric companies.

The sound equipment evolved by the Radio Group was not to become exclusive to FBO Productions, Incorporated. To make it available to the entire motion picture industry the Radio Corporation of America, in April, 1928, organized a wholly owned distributing corporation, RCA Photophone, Incorporated. Since the Photophone system had been perfected several months after Electrical Research Products, Incorporated, subsidiary of the Western Electric Company, had introduced the Vitaphone and Movietone processes for the synchronization of motion pictures, RCA



Photophone, Incorporated, was confronted with the problem of entering a market a large part of which had already contracted to use competing sound equipment for a period of more than 10 years. Therefore, to stimulate the sale of its product through the development of motion pictures recorded by the Photophone process, and at the same time to provide for experimentation, RCA Photophone, Incorporated, organized a wholly owned subsidiary known as RCA Photophone Pictures, Incorporated. The initial activities of this company were confined to the establishment of a fully equipped sound studio in New York City. Plans called for the production of both short subjects and feature pictures by the company and by any lessee who was desirous of taking advantage of the available studio and sound-reproducing equipment.

While plans for the proposed studio were still in the formative stage, the Radio Corporation of America, through the medium of RCA Photophone, Incorporated, secured an option on the control of FBO Productions, Incorporated. Shortly thereafter, the Radio Corporation of America negotiated an agreement whereby the Keith-Albee-Orpheum Corporation, a theater-operating company, would pass under the practical management of RCA Photophone, Incorporated. The plan called for the formation of a holding company to be known as the Radio-Keith-Orpheum Corporation.

The estimated total asset value of the Radio-Keith-Orpheum Corporation approximated \$80,000,000 exclusive of the worth of the Radio Corporation of America, whose relations with the new company were purely contractual. This contractual arrangement with the Radio Corporation provided the new company with access to the facilities of RCA Photophone, Incorporated; with the nucleus for a cooperative booking service for artists employed by the company and by the National Broadcasting Company; and with the means for broadcasting joint programs by the two companies and for experimenting and developing all fields

of electrical entertainment, such as television. At a later date, through the acquisition of the Victor Talking Machine Company by the Radio Corporation of America, the Radio-Keith-Orpheum Corporation was provided with further interchange of contract artists and with facilities for the reproduction of sound by the disc or phonograph-record method and for further development in the amusement field. Early in 1931, the extent of these holdings was further augmented by the acquisition of the Pathé Exchange, Incorporated.

Actual control of the Radio-Keith-Orpheum Corporation was to remain in the hands of its stockholders. Management control, however, was vested in the Radio Corporation of America. The vice president of the latter corporation was appointed chairman of the board of directors of the Radio-Keith-Orpheum Corporation. Several other prominent officials of the Radio Corporation also were elected to the board. Their immediate problem concerned the assimilation and subsequent reorganization of the various units included in the Radio-Keith-Orpheum Corporation.

The development exemplified in this illustration has been more or less paralleled with the other major groups: the Paramount Publix Corporation, the Fox Film Corporation, and Warner Bros. Pictures, Inc. These interests go far beyond those related merely to vaudeville and motion pictures. Several alignments with the legitimate theater have been from time to time discussed, as, for example, various rumors concerning the Shubert group. As parallels to the close agreement between the Radio-Keith-Orpheum Corporation, RCA Photophone, Incorporated, and the National Broadcasting Company are the close affiliation of the Columbia Broadcasting System with the Paramount Publix Corporation, and the operation by the Warner Brothers of the Warner Brothers Broadcasting Corporation.

Another ramification of these interests is created by the control by Warner Bros. Pictures, Inc., of the Music Publishers Holding Company, and of such well-known publish-







ing houses as M. M. Witmark & Sons, the Remick Music Company, Harms, Incorporated, and others. Warner Brothers still control the Brunswick Radio Corporation, but they sold the commercial records division of this company in the latter part of 1931.

The large interests, which, with the coming of sound, the major electric companies such as General Electric and Western Electric have come to possess, also suggest wide internal ramifications. There is no particular need here to discuss these relationships. Some idea of the complex character of them may be seen in Exhibit 25. Later in the discussion a more detailed consideration of the issues involved may be found.

Various financial groups have also become increasingly interested in this field. In the summer of 1931, the board of directors of the Fox Film Corporation was reorganized, following the withdrawal of Halsey Stuart & Company, with the result that a majority of the board of directors were bankers. While that situation was the first in which bankers had an actual voting control of a major motion picture company, banking influence had been a predominating factor in the Paramount Publix Corporation through Kuhn Loeb & Company, and in Loew's, Incorporated, through Lehman Brothers. With Warner Brothers, Goldman Sachs & Company was represented through Waddill Catchings as chairman of the finance committee. In practically every company a predominant banking influence can be discovered. The entrance of these large financial interests into the motion picture field in a direct, continuing, and controlling manner has had an influence paralleled only by that of the electrical interests. Subsequently, we shall have occasion to revert to the part played by these financial interests in determining the actual policies of the motion picture companies.

Thus the motion picture industry has grown to one of vast size involving interests far beyond those once considered as included within its proper field. The publication of music, the manufacture and distribution of phonographs and phono-



graph records, the utilization and at least partial control of broadcasting facilities, to say nothing of interests in the manufacture of film stock, in theatrical equipment, production, and distribution, and other interests, are all now directly a part of this tremendous industry. And running through all these transactions and coloring all the policies are discernible the parts played by financial groups of first importance and of electrical interests to which motion picture exhibition was for many years as completely foreign as could be imagined.

## CHAPTER III

### PRODUCTION

THE broad outline of the organization created for the purpose of producing motion pictures has been discussed in the immediately preceding chapter. The character of that organization obviously varies considerably from one company to another, depending upon such factors as the size of the company and the distribution of its pictures as between features, short subjects, and newsreels. Regardless, however, of the details of organization, it goes without saying that there is one problem which is common to all companies, namely, the problem of planning production.

It is probably safe to say that in many respects the central problem confronting the motion picture industry is the problem of what pictures to produce. Obviously, unless pictures which prove to be box office successes can be offered to the public, the company creating them cannot be a financial success. In one sense, therefore, the only real test of a successful picture is whether or not it produces a profit for the exhibitor. Yet, at the same time it not infrequently happens that pictures which are box office successes, and are therefore entirely satisfactory from the producer's point of view, are most severely criticized by religious and social organizations of one sort or another as not being satisfactory. Clearly the two groups are not measuring the success of a picture by the same yardstick. What constitutes a good picture depends wholly upon the definition of "good", as those in the industry have long pointed out. If it be true that the most of the pictures produced are in questionable taste according to high literary or high moral standards, it seems to be true that the greater number of people prefer to see this class of picture. The admission price paid by the

shop girl is the same as that paid by a minister of the gospel, and there are a great many more people who are interested in the class of pictures which this girl likes than there are looking for pictures which are satisfactory according to the other standard. Motion picture companies are, after all, in business to make money. One can scarcely blame them for selling a product which the public seems to prefer. However, one must be certain that the producers really judge mass demands properly and not by the same sort of self-determined standard which they criticize others for setting up.

There is, it is true, a very real question as to whether or not the producing companies have pursued the most farseeing policy. The problem of censorship will be discussed subsequently, but it may be worth while to call attention now to the fact that most of the agitation for censorship has come from those who believe that the motion picture has too many times sought to earn profits by appealing to tastes which on the whole are not of a very commendable order. The remark has been made, "When you go to see a fine picture, when you stay away from a bad one, you are the most effective reformer in the world."<sup>1</sup> The trouble with this reasoning is that in most cases a person is unable before seeing a picture to know whether it is good or bad. Certainly the title means nothing; the advertising gives little or no indication; and often the reviews appearing in the daily papers are prejudiced. If the industry finds itself confronted by continuing threats of legal censorship, then, like the saloon of old, it has no one but itself to blame.

It is very encouraging to know that there has been a distinct tendency for producers to give consideration to what is commonly spoken of as the problem of stratification. How far is it possible to make pictures for particular classes of people? In so far as this might be feasible, it would have several advantages. One would be that persons who refuse to view the great bulk of pictures now offered to the public,

<sup>1</sup> Fred S. Meyer, "What's Right with the Movies", *Film Daily*, December 22, 1931.

confining their theater attendance to those somewhat rare occasions when pictures appealing to their particular interests are shown, could be induced to attend the cinema much more frequently. This result in itself would tend to allay some of the agitation for censorship and at the same time draw upon a potential market not now covered to the advantage of the producer.

In the past the producers have said that pictures cannot be produced for particular classes of people. It has been their contention that these classes are too limited in number and that no picture created for a specific class would have sufficient drawing power to make a financial success. Recently, however, more serious attention has been given to the problem and a few attempts have been made to produce pictures intended to appeal to particular classes of audiences. On the whole these attempts have not been very encouraging. It is highly probable, however, that the reasons for this lack of success are to be found in the unduly high production cost of the films attempted and in the poor advertising which they received. This problem of stratification is merely one of the difficulties confronting those responsible for the planning of the motion picture product.

Up to the present, it is undoubtedly true that no company has been able to develop to its own satisfaction any method by which it can guarantee in advance that a proposed picture will be a box office success. Publishers likewise find it impossible to forecast with any degree of accuracy which of their books will prove successful.<sup>2</sup> Experiment, reliance upon hunches, or blind guess seems to be the usual practice. This is not for a moment to imply that producers have not given a tremendous amount of serious consideration to the topic. Quite the contrary is true. Producers have spent years in studying this question, and needless to say some progress has been made. The fact still remains, however, that gener-

<sup>2</sup> *Economic Survey of the Book Industry, 1930-31*, by O. H. Cheney (National Association of Book Publishers, 1931). Cf. especially Chap. III, "The Book, the Buyer, and the Critic," pp. 73-130.

ally speaking the attitude of the industry is that only after a production has been submitted to the public can a definite prediction as to its success be made.

Despite the general reliance upon hunches, practically all producers give unfailing attention to box office receipts. Although these receipts are affected by weather conditions, the popularity of supplementary attractions, the location, type, and equipment of the theater, and numerous other factors, nevertheless a study of such reports, it is believed, indicates in general the success of the pictures involved.

One of the principal difficulties involved in the study of box office receipts lies in the inability of producers to secure the necessary information. Exhibitors are prone to guard strictly all information concerning their receipts, primarily because they fear that knowledge of the exact amounts received will cause producers to demand higher rentals for their next year's product. Producers controlling national theater chains, as well as those selling their pictures under percentage price policies, are less affected by this difficulty than are, for example, the strictly independent producers who lease their product primarily on a flat rental basis. Affiliated chain theater managers usually are required to make weekly, and even daily reports on receipts, local conditions, and program contents, in addition to giving their personal opinions on the inherent drawing power of each picture.<sup>3</sup>

*Variety* and the *Motion Picture Herald*, general trade periodicals, publish reports on the box office receipts of the largest theaters in all the important cities throughout the United States. These reports are compiled and written by men thoroughly conversant with the theatrical business from information secured by questioning exhibitors and theater

<sup>3</sup> In judging the drawing power of motion pictures it is often possible to differentiate between the merits of the picture itself and the exploitation to which it has been subjected. Well-advertised pictures not containing general entertainment value draw large patronage only during the first few days of their local exhibition. On the other hand, the patronage afforded real attractions often is fairly constant, principally because of word-of-mouth advertising, increasing toward the end of the local engagement.



patrons and through personal observation. The reports are supplemented by brief accounts of local conditions, competition, and other influential variables. Although not infallible, these reports are accepted by the industry as being reasonably accurate.

Practically all motion picture trade papers carry reports on the results of the showing of pictures. Some of them from time to time have published percentage estimates of the ratio of income received during the exhibition of the reported picture to the average receipts of the particular theater reported. Others present the opinions of a few exhibitors on the merits of certain pictures, with comments on the titles, story value, "gags", etc. Still others endeavor to rate selected pictures as excellent, good, fair, and poor, maintaining similar cumulative reports for each picture during its period of exhibition.

Of the nonstatistical sources of information, reviews of motion pictures by dramatic critics, trade papers, magazines, and other publications provide assistance in measuring public tastes. For obvious reasons reviews frequently differ widely in opinion. Those written by dramatic critics, while not always indicative of the public's reaction, are valuable criticisms of the literary and artistic merits of the pictures. Reviews by trade journals and newspapers, while presenting a reasonably accurate cross section of mass opinion, sometimes are influenced by the amount of advertising received from producers.

The amount of so-called "fan" mail received by motion picture stars is another index used by producers to measure public opinion. The volume of such mail is considered a reliable indication of the popularity of stars and of the types of pictures in which the public wants to see them. Fan mail sometimes contains suggestions which are both constructive and practical.

Producers with affiliated theater chains usually obtain expressions of public opinion by stationing theater managers, ushers, or other employees at points of vantage in the the-

aters where they may readily overhear the remarks of patrons. Additional information is secured from independent exhibitors, who often express their own and their patrons' opinions to film salesmen. The latter are also in a position to discuss pictures with people outside the industry, whose opinions as a rule are very frankly expressed.

Some producers have a high regard for the opinions of the executives of their distribution and exhibition departments. These officials, because of the nature of their work, maintain a close contact with the public at large and, therefore, are in a position to gauge accurately the public's reactions to different pictures. In some cases to obtain a combined opinion, large producers have formed cabinets, the members of which include the executives from all departments whose activities reach the public directly.

Assembling the results of pictures already released is a far easier task than anticipating the type of pictures which will appeal to the public several months hence. A number of aids are available, none of which, however, offers very accurate indications of tendencies in public taste.

Executives in all departments watch the newspapers, magazines, books, and the general news of the world to keep abreast of the latest developments in public interest that may constitute good picture material. In watching the movement of public interest, they attempt not merely to recognize the news of the moment, but to anticipate, as far as possible, the trend of events over a period of several months so that a picture made to take advantage of public interest in an event or series of events can be made and shown before that interest has waned.

Besides a transitory interest in the news of the moment, people have also interests which are somewhat standard for a comparatively long period. Certain works of fiction, for example, constitute the bases for screen dramas that seem to be popular at almost any time. The writings of some authors are nearly always favorably received. Certain screen actors, over a more limited period, apparently draw large

audiences regardless of the pictures in which they are acting. Two factors which in general seem to have popular appeal are youth and beauty. While these two elements have been found by motion picture producers to attract the public to theaters, they are probably of less importance since the introduction of sound pictures than they were formerly.

Since practically all the information secured from the more commonly used news media is intangible, producers as a whole consider it an inadequate means of measuring the probable future success of specific types of motion pictures. The Universal Pictures Corporation, from time to time, has carried out various experiments in an attempt to ascertain the type of pictures desired by the public. One venture, which has been continued uninterruptedly for several years, consists of the insertion of a series of weekly articles in the *Saturday Evening Post*, which carry brief descriptions of current Universal attractions and of the stars playing in them. Each article includes also a statement signed by the president to the effect that the company would be pleased to receive suggestions as to the kinds of pictures which the public would like to see. While the greatest benefit of this column to the company doubtless is obtained from the viewpoint of advertising, it also is of value as a means of securing the opinion of the public on many subjects. In an effort to obtain a more complete expression of opinion from the public, the company prepared a list of questions which it inserted in one of its regular weekly columns in the *Saturday Evening Post*. It requested all readers to write their answers and opinions in letters addressed to the president of the company. This advertisement elicited a large number of rather intelligent replies.<sup>4</sup>

As another experiment, the Universal Pictures Corporation in 1929 installed a psychologist from the staff of a well-known university in its studio in Hollywood. His duties were

<sup>4</sup> See *Motion Pictures* by Howard T. Lewis, Harvard Business Reports, Vol. 8, p. 134.

concerned with the analysis of public tastes and reactions, and the interpretation of these factors in terms of film values. This experiment, not having been satisfactory, was discontinued after a nine months' trial. In 1930, the same company created a new studio executive position, the duties of which consisted solely in the measurement of the public's demands for types of motion pictures. This position, which was filled by a man of broad experience in all departments in the industry, required an analysis of style cycles in picture types, a market analysis of demands in specific localities, and consultations with the producer and director of each film.

The Paramount Publix Corporation, since 1930, rather than schedule its entire program in advance for one year, has announced the details of not more than three-quarters of the total number of pictures to be produced. The remaining films are produced and released to conform with changing public taste. In this manner the company hopes to minimize the number of untimely and unsuccessful films. Operation under such a policy requires the carrying of an inventory of more than 7,500 stories, scripts, and scenarios, covering a great variety of subjects. Equipped with such material the company, on short notice and with such additions and alterations as are found necessary to meet current conditions, is in a position to start production on almost any sort of picture.

The experience of one of the major producers in facing the problem of planning production may be considered as a fair example of the experience common to most producers. The belief held by this company until late in 1930 was that the factors involved in estimating the public's tastes in motion pictures could not be organized and that the most satisfactory method of anticipating trends was through the judgment of its executives, who had had long experience in trying to sense public response. Executives of both the production and distribution departments were constantly watching for tangible and intangible evidence which might



indicate trends. Frequent conferences were held within each department, and an occasional conference of the executives of both departments was held for the exchange of opinions and the formation of a composite judgment.

The company made use of the reports and recommendations of the managers of its theaters and of its salesmen's reports with regard to the type of pictures which the exhibitors believed that their audiences would like to see. Expressions received from theatergoers about the pictures which they would like to see in the future were of some assistance; they were not given much weight, however. The company believed that in most cases the public based its opinions on past reactions, and not on well-thought-out analyses of its own likes and dislikes. The company believed also that, as in styles in clothing, the public was more able to indicate its reaction to offerings as they were made than to present original ideas.

Some attention was given to the opinions of dramatic critics, who, while their principal activity was to write reviews of pictures already produced and exhibited, frequently expressed opinions on the type of entertainment which the motion picture producers should try to furnish, sometimes offering ideas worthy of study by producing companies. At times these expressions were the opinions of the critics themselves, based on the experience gained while writing reviews, and at times they were reflections of opinion which they had heard or read. While these opinions were not overlooked by the company, it was believed that they frequently evinced a lack of comprehensive understanding of the technique of motion picture production.

On the basis of these types of information, and governed by the available story material, the company in the spring of each year planned a program of pictures to be produced during the ensuing theatrical year. For some of its story material and the adaptation of that material to motion picture use, the company depended upon the services of a staff of writers and readers which it maintained in Holly-



wood.<sup>5</sup> A number of writers were under contract to write scenarios. Other writers and readers were organized in several sections. Some members of the staff devoted their entire time to searching out and reading books and stories which, in their opinion, would make satisfactory plots for motion pictures. To this staff were presented all the suggestions of members of the various departments, as well as all unsolicited scenarios offered by amateurs and other writers. A synopsis was written of each story which seemed to the staff to offer any possibilities. These synopses were then read by another section of the staff and analyzed for their adaptability to motion picture production. There were certain standards of motion picture technique which a story had to attain. The staff put its approval only upon such stories as met with these technical requirements and were at the same time interesting.

The stories, and such scenarios as had been offered by the company's staff of writers, were then presented to the executive in charge of production. He discussed the proposed pictures and others, such as current stage successes, novels, and short stories, the motion picture rights to which he had acquired either outright or on option, with a scenario cabinet composed of the chief production executives and certain directors. This cabinet, in making its decision, tried to plan a group of pictures which it believed would be well balanced and popular.

With the opinions of his cabinet in mind, the executive in charge of production then conferred with the executives of the distribution department, the president of the company, the treasurer, and certain minor executives, all of whom comprised the Program Planning Committee. Although such factors as facilities for production and theater requirements were considered at this conference, it was called chiefly for the purpose of making a decision regarding the program of

<sup>5</sup> The story department maintained a representative in the home office in New York City to contact publishers, writers, and such other sources of material as were available there.

pictures which the company would announce and release during the ensuing year. It was at this meeting that the ideas of the production and distribution department were correlated. The distribution executives <sup>6</sup> analyzed each picture on the basis of its popularity, appeal, and salability. The president required from the conference a program of pictures that would be so balanced as to derive the greatest income for the company. He participated actively in all phases of program planning, often selecting and purchasing stories and stage plays. His decisions were final in matters pertaining to selection of product. The program as decided upon at this conference, while subject to change, usually remained substantially the same as planned. It formed the basis of the company's announcements to the trade and of the finance department's budgets. Finally, the pictures were given production dates and assigned to directors for production.

Some of the members of the Program Planning Committee were convinced that, in the procedure followed, decisions were dependent too much upon opinion. They believed that the company should consider, therefore, the adoption of a more systematic method. It was not until several of the 1929-1930 season's pictures had been released, however, that sufficient evidence was forthcoming to prove the inadequacy of the procedure which had been used.

Among the pictures released early in the 1929-1930 season, a number proved to have low drawing power. In most cases this lack of success could be attributed directly to inefficient program planning. One of these apparent failures was a very costly musical picture. While the film in itself was satisfactory, its type had been overworked, and therefore was not favored by the public in 1930. The use of color sequences was also found to be ineffective, in part perhaps because of the unnatural shade of the pigment.

<sup>6</sup> The distribution department usually determined, on the basis of its estimated selling capacity, the number of pictures to be produced each year.

Certain actors had been cast in parts not fitted to their particular talents. Several pictures had not met with public approval because their plots and treatment were similar, and still others, because they were either too sophisticated to suit the public or were lacking in timeliness. As a result, the company experienced a decline in sales and bookings, and in addition found it necessary to effect several changes in its planned program for the 1930-1931 season. One of the changes involved the shelving of a musical production in which over \$200,000 had been invested in the scenario and preliminary work. Although the company was in a position to produce substitute pictures, their booking and release for exhibition introduced complicating factors.<sup>7</sup>

In addition to the inability of a few specific pictures to achieve success, a general decline in box office receipts throughout the industry, caused partly by the general business depression but chiefly by an increasingly discerning public, furthered the need for a more scientific planning policy. Only films of genuine entertainment value and variety of appeal were being favorably received. It was apparent that financial success was in a large measure dependent upon the ability to produce first-rate film attractions. This dependence was likely to become still greater in the future, especially because of the general adoption by the industry of percentage price policies.

In the fall of 1930, the company acquired control of a so-called "legitimate theater" located in Los Angeles. This theater was to serve as a laboratory in which the company could gauge the public's reaction to plays before they were scheduled for production as motion pictures. In addition, it was expected that the legitimate theater would enable the company to experiment with a variety of stories which could be purchased at low prices either outright or on option. A further advantage would accrue to the actors and actresses. Through the company's ownership of stage facilities they

<sup>7</sup> See Chapter IV.

would be able to develop their histrionic abilities and likewise to sense the public's reaction to their manner of portraying the rôles in which they had been cast.

In so far as certain types of product were concerned, such as direct adaptations from stage plays, the company's executives foresaw many advantages to be gained from a union of the stage and screen. They recognized, however, that such a union would not solve completely the company's problem. In their opinion, the production of motion pictures involved an art separate and distinct from the legitimate stage; and, although sound had provided films with an additional medium of expression, their future success rested largely upon pantomime. Therefore, while a number of motion pictures each year might be produced direct from their stage versions, most of them would have to be produced primarily as motion pictures.

Up to the present, the company has not devised an entirely adequate method for planning its product. It is not certain, furthermore, that a plan can be found that will be fully adequate. Recognition has to be given, for instance, to the effect which competitors' products may have on any planning procedure, regardless of the method's intrinsic merit. Thus, even though the company might be able to gauge public tastes accurately and to produce pictures accordingly, the production and release of similar pictures during the same year by five or six competitors would minimize the advantages to be derived from such a procedure.

On the other hand, the planning method which the company has been using might be made practicable if it were modified in such a way as to provide, for example, a study to determine the existence and extent of style cycles in motion pictures. Such a plan might include a market analysis according to types of theaters and audiences to measure the probable demand for pictures produced especially for particular groups of people. As an alternative a somewhat radical departure from the procedure in use might be made, namely, the partial or complete abolition of future product



planning. Instead, the company might announce at the beginning of each theatrical year only the number of pictures to be produced in that year.

It is generally conceded by the company that it should continue to make use of all available sources of data indicative of the public's demands and, if possible, to devise ways of organizing this information concretely. A closer cooperation between the company's theater-operating and production departments also is deemed advisable. This might be effected through the development of a sizable chain of theaters on the West Coast, which, by being near the production center, could be used advantageously for laboratory purposes. It is believed, further, that an analysis should be made to determine which of the company's theaters throughout the country are attended by the most representative type of theater patron. Having determined these representative theaters, the production department should be in a better position to analyze the probable tastes of the average motion picture fan.

As a matter of fact, no wholly satisfactory method of determining the probabilities of success of a proposed picture has ever been devised by any company. The method followed is still one of guessing; the producers don't know just what the public wants, and it is doubtful if they ever will know. Their situation is like that of producers of legitimate plays, in which field the list of failures is a very long one. It is a problem involving the factor of style, and in that respect is similar to the problem faced by book publishers. While the problem is admittedly a very difficult one to solve, it must be recognized that, in the case of the motion picture industry, far too little attention has been given to the question until recently. This failure possibly may be explained by the very nature of the industry's development.

During the novelty stage in talking picture development, the industry enjoyed great prosperity and had neither the time nor the inclination to analyze its new medium of expression. Former stars of the silent screen were cast in pic-



tures regardless of their histrionic ability. Stars of the legitimate stage were recruited almost at random. Little thought was given to artistic perfection. Pictures were produced as rapidly as possible and at great expense. To protect their interests, producers entered into long-term, flat-salary contracts with writers, musicians, directors, actors, etc. The primary object of the major companies was to expand their facilities.

Beginning in the spring of 1930, however, it became apparent that conditions in the industry were not entirely sound. From the spring through the fall months, box office receipts declined from 20% to 30% below the average for the same period in 1929. One large chain was reported to have lost \$480,000 in one week in October.<sup>8</sup> It was not uncommon throughout the country for theaters to be dark, regardless of whether they were units of a chain or independently owned and operated. It is true that this decline was caused partly by the prevailing general business depression and by the popularity of such attractions as miniature golf, night football, and night baseball. However, without discounting the effects of the depression, it is scarcely to be doubted that the lack of novelty, effective dialogue, and entertainment value in films was largely responsible for the decline. With the passing of the novelty stage in the development of talking pictures the public, according to both critics and experienced showmen, not only lessened its interest in motion pictures, but also became far more discriminating in its selection than ever before. The outstanding success achieved by several very good films of different types during the period from May to November may be taken as further proof that decline in the quality of product more than any other factor was responsible for the decrease in box office receipts.

A number of reasons may be given for the production of the low quality of pictures shown during 1930. Probably one

<sup>8</sup> *Film Daily*, November 4, 1930, quoting the *American Cinematographer*.

of the most important of these was that producers had relied too much on the novelty of sound to carry their pictures. Another factor, which made difficult the maintenance of a high standard of quality in films, was the constant state of flux in corporate ownership throughout the entire industry and the subsequent unrest among managements and employees. In connection with these changes of control, it is debatable whether the managerial policies of some of the bankers and the large electric companies, when applied to the production of motion pictures, were sound. One of the objections of producers to their policies concerned their demands for lower negative costs. Some producers believed that since there was little relation between production costs and box office receipts, such economies would retard the creation of more interesting films.

A further factor contributing to the prevalence of poor films was that motion picture executives, having gone through the recent period of prosperity in the film industry, had spent much time in operating the stock market. Then, too, some producers simply had failed to perceive that the general public was becoming increasingly intelligent in respect to its choice of motion pictures. One of the major reasons for the production of low-quality films, however, is inherent in the motion picture industry. This factor is important because it is applicable today as it was in 1930, and it is too much to hope that it will ever be substantially removed. It is that the very number of feature pictures being produced every year makes it impossible for them all to be good, whether judged in terms of box office receipts or by any other standard.

No company, regardless of its organization or the ability of those in charge of production or the imaginative power of those responsible for scenarios, can be expected to turn out 50, 60, or 70 pictures year after year and at the same time have them all distinctive and uniformly successful. From some points of view, it is rather unfortunate that producers feel called upon to resort to these large-scale pro-

duction programs. The temptation to do so is a perfectly natural one, however. It grows out of their desire to have a large volume of product to sell and from a wish to be able to fulfill the requirements of their own theaters in as large a measure as possible without depending on other companies for product. Although the temptation is quite understandable, it does not constitute entirely a justification. It is a phase of the stress on volume which has reacted so unfavorably on many another type of business. The consequence is the same type of losses. The attempt to force upon exhibitors a volume of product, much of which is of questionable box office value, is analogous to the attempt on the part of sales organizations in other types of business to look for returns in the amount sold rather than in the profitableness of the individual sales.

In the case of motion pictures, the straining after a large quantity of product has proved unfortunate in other ways. In types of business widely different from motion pictures, particularly where the product is a standardized one and line production methods can be used, substantial savings sometimes develop in production costs as the volume of output increases. True, this attempt to realize production economies throws a heavy burden on the sales organization, with the result that *in toto* the policy may not prove so successful as it was at first believed that it would; nevertheless, there is some justification for the volume emphasis from a production point of view. This is not true in motion pictures, however. There are obviously limitations on the number of really different pictures that can be made by any one company. The very fact that they are presumably not alike means that mass production methods cannot be used with the same measure of success as in some other industries.

Not only is this true for the company as a whole, but it obviously is true for individuals within a company, each of whom is made responsible for a very large number of productions. Thus, while it is clear that the solution to the decline in box office receipts is to be found chiefly in the produc-

tion of better films, it must be recognized that the making of these better films may be quite impossible under the existing highly centralized form of production organization.

As one step toward decentralizing production, a few companies, in 1930, gave considerable thought to the establishment of studios on the East Coast so that pictures might be made there as well as at Hollywood. Production in and near New York offers the advantage of close connection with the legitimate stage and its people and plays. Moreover, the development of two mechanical improvements, the supersensitive raw film, which lessens the need for light, and the Dunning process, which under any conditions of action permits interior "shooting" that can later fit into outdoor atmospheric backgrounds, is held to lessen the advantage of climate which Hollywood has had over New York. Up to the present, however, motion picture production has not been introduced to a large extent on the East Coast, and Hollywood remains the center of picture-making.

In 1926, at which time the motion picture industry was confronted with a substantial decline in the public's attendance, consideration was given by some producers to the unit method of production as a means of avoiding a stereotyped product.<sup>9</sup> Unit production involves a complete decentralization of production. Financial investment by distributors in the form of guaranties or advances represents the only line of centralized authority. A few companies had followed a modified form of the system before 1926. The advent of sound and the accompanying public interest in films, however, not only diverted producers' attention from the unit system, but also tended to stimulate mass production through the merging of studios. Thus, by 1929, it was not uncommon for one production executive to supervise the manufacture of from 30 to 50 feature pictures annually. It is obviously impossible for one centralized studio organization to give to this number of pictures the attention which it would be

<sup>9</sup> See p. 7.



able to devote to seven or eight, for example. One student of the industry predicts a compromise of unit and centralized systems, with the unit producer receiving a nominal drawing account.

In the early part of 1931, one of the largest producers, which for the purpose of this discussion may be called the Brewster Pictures Corporation, considered the advisability of producing under a policy of decentralization. This company's production executives were of the opinion that, after the introduction of sound, a large measure of individual effort became even more essential to the making of successful pictures than before and that factory methods could no longer be applied successfully to the creative aspects of film production. Instead, the industry would have to revert to the methods which, through years of experiment, had been found most effective on the legitimate stage.

According to the plan which the company considered adopting, the Brewster studio would be practically divorced from responsibility for the quality of the company's product. It would become a business organization in which an individual producer could be assigned space, equipment, and the physical materials of production. Thus, except for such adjustments in personnel and physical properties as were found necessary to meet the new conditions, the studio operating organization, which included the control departments, the purchasing and maintenance departments, and all departments concerned with the tangible production materials such as the sets and equipment departments, the carpenter shop, the laboratory, the miniature and trick department, the supplies department, etc., would remain intact. To a certain extent, the home office story department and the production executive staff could be left unchanged. Since it would not be advisable to rely to a great extent upon outside sources for story material, the home office story department, in addition to assisting unit producers in the selection and purchase of material, would endeavor to have on hand at all times a minimum number of desirable stories.



Under the new plan, directors, actors, actresses, writers, scenarists, musicians, song writers, and perhaps the producers would be almost entirely free from studio jurisdiction. The company would not carry a roster of stars, directors, etc., signed to operate under either short- or long-term, flat-salary contracts. Instead, contracts would be made with producers, or in some cases directors, whereby they would agree to deliver to the company a certain number of completed films for which they would be held responsible.

The number of pictures assigned to each producer would be governed by the company's requirements, the time available, and the proved ability of the producer. If the company had available story material satisfactory to the producer, the plan provided for its use. In most cases, however, the producer who had contracted to deliver a picture would acquire his own story material either from published articles and other sources, or by engaging or permitting the company to engage a writer or scenarist to construct an original plot. In either case, the company's approval would be necessary before the "vehicle" was placed in actual production.

Having approved of the scenario for a given picture, each producer or director would be allowed to proceed with his assignment unmolested by company supervision. The producer would select a cast in accordance with his own ideas. He likewise could choose a director, supervisor, and all other personnel needed to produce his particular film.

Certain types of productions upon completion of rehearsal would be presented in one or more of the company's legitimate theaters. Action and scenic pictures, and other films in which outdoor settings were an inherent part of the plot, would not be presented in this manner. If the public's reaction to a stage presentation was encouraging, the play could be bolstered where weak and its run continued until a high quality of performance had been reached. Plays sponsored by the studio that did not meet with public approval, unless they offered distinct possibilities when re-

adapted for film production, would be discontinued immediately.

The legitimate theaters controlled by the Brewster Pictures Corporation were operated by a separate corporation. They were operated for a direct profit and not according to a principle of joint cost. The management of these theaters, although divorced from the parent company, was subjected to the latter's supervision. This policy was deemed necessary to insure maximum cooperation between the theater-operating company and the production department.

Not all the plays staged in the legitimate theaters of the Brewster Pictures Corporation would be sponsored by the studio. On the contrary, a majority of such plays would be produced under the direction of the theater management. In the event that the plays presented on the legitimate stage developed motion picture possibilities, they would be made available to the production department before being offered to other studios. The production department of the Brewster Pictures Corporation would also be granted the right to experiment, within reason, with changes that might improve the film version but in no wise harm the stage play.

No definite plan had been evolved for the allocation of costs. However, since the company expected to derive a profit from its stage venture, a definite system of allocating costs would be necessary. (Among the many items and variables to be considered were: theater carrying and operating charges; studio costs, including salaries of contributing artists and executives whose services were more valuable to picture production than to stage production; losses or profits on plays staged by the studio; costs resulting from the presentation of plays that suffered because of the use of picture actors and actresses instead of stage players; and promotional costs.) In the allocation of promotional costs an apportionment had to be made as between the immediate cost of promoting a stage play and the value carried over from that expenditure to the future promotion of the play as a motion picture.

Certain plays might be moved to the Brewster studio intact. Others, especially those produced by the theater management, might be provided with new casts for the film version. In any event, all stage plays, when ready for picturization, would be assigned a stage, a staff of technicians, an art director, and perhaps a costume director, etc., in the Brewster studio.

The financial arrangements involved in the proposed decentralized production policy were essentially on a percentage basis. The Brewster Pictures Corporation would finance the purchase of materials for production, the theater and studio rentals, and the salaries of all employees. The so-called creative personnel would be paid small allowances, and in addition would receive a percentage share of the net profits derived from plays and pictures in which they took part. The exact percentage paid to each participant would be determined largely by the relation of the importance of his or her part to the production of the unit. Thus, the author, director, and star or stars might receive a substantial proportion of the net profit, whereas a song writer whose melody was incidental to the plot might receive only a fraction of 1%. The company anticipated considerable difficulty in effecting an equitable division of profits on plays in which the participants were changed in adapting the screen version from the stage version. The executives recognized that an eventual solution of this problem might be found by placing all stage work, exclusive of that done solely for experimental purposes, on a flat-salary basis.

Decentralization, some of the executives believed, would provide all the advantages of large-scale operations where tangible production materials were involved, at the same time encouraging individual effort by financial award in matters pertaining to the creative phases of picture production. The net result, it was thought, would be the production of better and more varied films.

The company recognized, in the mass production methods in use in 1930, the general weakness of any policy under

which one executive supervised the production of from 30 to 50 pictures. While it was possible to engage the best supervisory and directorial ability available, the fact that the ideas of these supervisors and directors were coordinated through a single executive or a group of executives had a tendency to minimize originality and the transfusion of new ideas. In addition, because of centralized production policies, one man was quite often in a position to promote certain favorite stars and directors, as well as to put into practice his own ideas, which might or might not be eccentric. There was a tendency, furthermore, for production managers, normally capable of making one or two very good pictures each year, to become automatons under pressure from studio routine and incidental detail.

Another objection to the existing system which the company believed could be met through decentralization was the lack of productivity and originality on the part of authors, dialogue writers, and others who, working for flat salaries under machine-like methods, did not have the incentive to produce the best results. Allowed to proceed on their own volition, knowing that they would profit according to the public's rather than a studio executive's opinion of their work, these writers, it was hoped, would devise the type of material necessary to insure a continuous flow of profitable motion pictures. The fact that no one author or director, as a rule, could produce successfully more than one or possibly two pictures each year would induce a large supply of new talent of all types to enter the industry, thus providing a wider diversity of ideas and a broader field from which to choose players.

The laboratory feature of the company's proposed plan, to be carried out by means of presenting many plays first on the legitimate stage, was expected automatically to eliminate a majority of undesirable pictures. The Brewster Pictures Corporation could sense public reaction to each production and accordingly make such adjustments as would tend to increase the production value of the picture. Direc-



tion, the amount of time necessary for photography, retakes, experimentation, and other factors directly responsible for a substantial part of the investment in motion picture negatives could be minimized or dispensed with altogether. A further advantage of the plan would accrue to the actors and actresses. By appearing in person before larger audiences they could better gauge their own capabilities, prevent their characterization from becoming local in color, and in addition renew their enthusiasm, which under typical Hollywood conditions often became stifled. The cost of producing a legitimate stage play with the "principles" engaged under percentage contracts ranged from \$35,000 to \$50,000; the same cost for musical films ranged upwards to \$200,000. Thus, in the event of complete failure, the net loss to the company would be insignificant in comparison with the loss on the same play produced only as a motion picture.

In addition to providing a means whereby the company could regularly produce financially successful pictures, decentralization, it was believed, would result in production economies which would have a twofold effect. From the standpoint of investment a percentage division of net profits rather than high fixed salaries, the lack of pressure for time and therefore the elimination of waste, and the laboratory test plan would reduce negative costs considerably, sometimes as high as 50% on negative costs which would otherwise be \$250,000 or more. Such a reduction should make it possible to realize a profit on approximately one-half the number of bookings required to net a similar profit in 1930. Carried still further, lower negative costs on high-quality pictures would make theater classification according to type of product feasible and profitable. Thus, producers of motion pictures, no longer obliged to manufacture a full line of product which appealed to all classes, could introduce a variety of films heretofore believed to be economically impracticable.

While admitting the needs for better pictures, a few of the company's executives objected to the proposed decen-



tralization of the production function. They believed that risk and profit sharing was not practical, that it would not meet with the approval of the players, writers, and others, and that it could not succeed under existing competitive conditions. These executives also objected to any form of market classification. They were of the opinion that success in the motion picture industry was dependent upon the production of pictures for the masses and that any digression from such a policy would be unwise.

The company did not adopt at once a policy of decentralizing production. Late in 1931, however, it did decide to produce under the unit system. At that time a number of producers were considering the advisability of changing to the unit plan. One of the first companies to put the system into effect was the Columbia Pictures Corporation. This company was reported <sup>10</sup> late in October, 1931, to have adopted the plan, using four associate producers, each of whom was to confer with the general manager in charge of production on story selection, adaptation, choice of director, cost, budget, etc.

In November, Fox was reported <sup>11</sup> to have instituted the unit system with two producers and four associate producers, and later in that same month it was reported <sup>12</sup> that Paramount had decided to adopt the plan with seven associate producers.

It is not likely, however, that merely decentralizing production, either as among individuals within a company or geographically as between the East and West Coasts, will solve the problem of better pictures at a reasonable cost. It should help. It is probable, however, that real progress must be accompanied by a different point of view on the part of those responsible for production. There is a good deal of psychology in the situation which contributes to the maintenance of what is so frequently designated as stagna-

<sup>10</sup> *Film Daily*, October 27, 1931.

<sup>11</sup> *Motion Picture Herald*, November 14, 1931.

<sup>12</sup> *Ibid.*, November 28, 1931.

tion in the motion picture art. Anyone at all familiar with the industry knows what is meant by the term "Hollywood psychology". For reasons which are being discussed elsewhere in this volume,<sup>13</sup> there grew up in Southern California a major center of production; to this have been attracted persons interested in production from every possible point of view. A more or less artificial atmosphere has necessarily been created as a result of the fact that the major interest in the life of these people has been the production of motion pictures. In spite of arguments to the contrary, the fact remains that those in charge of production are living in this artificial atmosphere quite out of touch with the normal trends of mind and views of life of the bulk of the American people. They have become self-centered in the sense that they are more or less impervious to outside criticism, usually taking the position that critics either have personal interests to advance or simply do not know what they are talking about. Newcomers are not generally welcomed, and a sort of defensive mental alliance has grown up against suggestions from the outside. That this attitude exists is recognized by some persons within the industry. For one, Martin Quigley, publisher and editor-in-chief of the Quigley Publications, has said:<sup>14</sup>

Unfortunately, Hollywood, for some reason not easily explainable, has become alarmingly isolated from the rest of the field because the production colony has resorted to means of insulating itself from many of the quickening and informing reactions that previously came to it from other sections of the industry. This has resulted, repeatedly, in Hollywood going contentedly in the wrong direction, oblivious of the fact that in the world-wide march of entertainment it was decidedly out of step. . . .

Hollywood has pretty completely resolved itself into a world of its own. This would be a proper state of affairs if Hollywood were making pictures for its own entertainment; but being charged with the responsibility of making entertainment for vast millions of the world outside, the condition is altogether wrong.

<sup>13</sup> See pp. 98, 394-395.

<sup>14</sup> *Motion Picture Herald*, December 5, 1931.

It is very commonly assumed that this so-called Hollywood attitude is productive of a sort of sabotage, which on more occasions than one has been used deliberately to wreck worth-while experiments for no other purpose than to prove that Hollywood is always right. All of this is somewhat intangible, but it is well known to every person in the industry. This is not meant to imply that directors and others interested in production are not hardworking individuals. They are. But their limitations of training and environment seem to be obstacles which up to the present the motion picture industry has not been able to surmount. The result is a series of very ordinary pictures, a large proportion of which have no justification for their existence.

Much has been said in the past about the desirability of producing pictures which are timely. By this is commonly meant that it is the desire of every producer to create a picture which, at the time of its release, will appeal to a public interest which is paramount at that moment. In this way it is believed that the largest amount of public interest will be centered upon the picture and its box office value enhanced. In line with this theory, many efforts are made months in advance to determine what the public interests will be. It is very doubtful whether this attempt is either successful or worth while. Certain events are, it is true, scheduled; e.g., it is known that through the press the nation's attention will be directed toward certain celebrations held in connection with historical anniversaries. By and large, however, such attempts to predict future interests are not likely to be very accurate or dependable.

It is true, of course, that any picture to be a success must appeal to some public interest. It must relate to something with which the public is familiar. However, the public's interests are many and varied. So long as a picture will appeal to any of these known interests, it should to this extent meet the requirement. Outstandingly successful pictures have appealed to some public interests, but in many cases these in-

terests did not dominate the public mind at the time the pictures appeared. On the contrary, they were more or less latent. Certainly one could not say that the subject matter of "Frankenstein" or "The Cock-Eyed World" or "The Champ" coincided with any particularly dominating public interest existing at the time each of these pictures was released. They were good pictures, well above the average in acting if not always in plot. They were successes because they were superior entertainment.

True, there is apparently one limitation on the practice of producing pictures without giving recognition to the factor of timeliness. Pictures seem to run in cycles. Hence producers work according to the theory that the public is interested in gangster pictures at one time, and at another time it is primarily interested in war pictures, and at some other time it is interested in sophisticated triangle pictures. Here again, it is very doubtful whether the theory held can be sustained. What actually happens is that an outstanding gangster or war picture is produced. Immediately other directors imitate it in an effort to take advantage of the new idea conceived by someone else and to capitalize on the favorable publicity which the good picture has received. As a result a flood of such pictures, more or less copies of the original, inundates the screen. This fact does not prove that the public is interested in gangster pictures at that moment. It proves only that those responsible for production are copyists, assuming with more or less justification that the public having seen one eminently good gangster production hopes (usually in vain) that the next one will be equally good. In other words, the fact is that whenever a good picture is produced, it will prove a success whether it be historical in character as was "Disraeli", or a comedy such as "Reducing".

Another consideration in this connection not to be overlooked is the fact that most pictures are shown in the first-run houses weeks and months ahead of their showing in sub-



sequent-run houses.<sup>15</sup> If it were true that the success of a picture depends in large part upon the timeliness with which it is produced, one would naturally have to conclude either that the timeliness which is desired relates only to initial showings or else that it is long sustained. The former may be true; the latter is not under ordinary circumstances. Frequently, moreover, the matters which are of predominant interest in one section of the country are of but slight concern elsewhere. So again one must modify the conception of timeliness, this time geographically rather than chronologically. Curiously enough, in this latter connection, there is, among those who hold the idea that the success of a picture depends upon its coincidence with public interests, the conception that timeliness is applicable to the domestic market only. At least, there seems to be no particular connection between the dominant concern of the American mind and that of people in foreign countries. The success of American pictures abroad, therefore, obviously must by this same line of reasoning be the result of some other factor.

These limitations of the Hollywood production mind are also reflected somewhat by some executives in New York responsible for distribution and exhibition. There are still on Broadway those who insist that what is a success in Times Square is bound to be a success elsewhere in the country. There is no particular reason why this should be so, and the bare fact is that the assumption simply is not true. After all, New York City is an artificial environment as far as the bulk of American people are concerned, and Broadway is the most artificial thing in New York. For this reason, if for no other, one might question the relation which box office appeal has as between New York and

<sup>15</sup> Occasionally, of course, pictures have been released simultaneously in a very large number of theaters throughout the country instead of being preceded by a Broadway run. This may have been due to a desire to capitalize on the timeliness feature; on the other hand, it may have been due to the knowledge that a picture was not good and a hope that large grosses would be obtained before the public had become aware by word of mouth that the picture was not all that it was supposed to be.



the rest of the country. Even if this were not true, it would seem that those responsible for motion picture policy would have had experience enough to demonstrate in terms of dollars and cents the inaccuracy of the assumption that as goes Broadway so goes the nation.

All this introduces a problem which producers should consider but to which they rarely do give attention—the problem as to the wisdom of releasing pictures which are known to be unsatisfactory. In other lines of business, merchandise which is inferior, and which if distributed would injure the manufacturer's name, often is destroyed. Pictures, however, once produced very rarely are voluntarily withheld from release. Censorship requirements may interfere with their general distribution; on the whole, however, after a picture has been produced, every effort is made to secure widespread distribution. In fact, so generally is this true that it is doubtful whether the desirability of withholding a picture from release is ever seriously considered.

An example of what is involved in this question is to be found in the experience of one producing company which actually faced the problem. RKO Productions, Incorporated, in the 1929-1930 selling season considered the advisability of permanently withholding the release of a film, costing approximately \$110,000 including studio overhead charges, which in the opinion of the company's distribution executives would not meet with public approval. The cast included but two fairly well-known stars' names. The plot was risqué and the dialogue ultrasophisticated. The censorship boards of three states, on the basis of preview showings, had banned the picture from exhibition in territories under their jurisdiction.

Although most of the company's major executives, except the production officials, were agreed that the picture in question would not achieve box office success, opinion was divided on the advisability of permanently withholding its release. Those who favored withholding the release averred that it would be decidedly unwise to chance a loss of good-

will. In their opinion, the quality of Radio pictures had not yet become known by the public or by the exhibitors. It would not be good business practice, therefore, to force distribution of a product adjudged to be inferior and of questionable propriety. If, in case the picture should be released, censorship proceedings were instituted rather generally, the company might suffer from unfavorable propaganda, especially from the social reform groups. On the other hand, by withholding the release, the company would establish a precedent which might bolster its standing in the trade and provide an invaluable selling argument in the future. RKO Productions, Incorporated, could withstand the financial loss without seriously weakening its position.

If the company decided to release the picture, the cost involved in its distribution would be approximately \$40,000. Of this amount about \$12,000 represented fixed charges which would have to be allocated to the other pictures in the event that it was decided to withhold release. Another reason for not releasing the picture was the likelihood that exhibitors in general would withhold their datings on the picture. It was probable that many would eventually cancel their bookings outright, while others would endeavor to effect a tradeout<sup>16</sup> on the next year's product. It was practically impossible to conceal the quality of any picture once it had been exhibited in one or more key centers.

The fact that the picture in question was scheduled to be shown in a majority of the 200 theaters operated by the Radio-Keith-Orpheum Corporation, and that 25% of the total expected gross receipts would probably be derived from this source, were other reasons advanced for withholding release. Whereas the total rental paid by the theater to the producer would offset a large part of the cost of producing the picture and therefore reflect favorably on the balance sheet of RKO Productions, Incorporated, the theater division, because of the low box office value of the film, might

<sup>16</sup> For a discussion of this practice, see Lewis, Howard T., *op. cit.*, p. 391.

suffer an operating loss which, in the aggregate, would be greater than the amount of the rentals involved. Thus the parent company would in any event show a net loss on the intracompany transaction. The weekly variable in box office receipts of many of the company's theaters ranged upward to 300%; the amount was dependent largely upon the drawing power of the feature picture.

The strength of this argument was weakened somewhat by reason of the theater division's right to refuse acceptance of any Radio picture which it did not consider suitable for exhibition. This right, however, had never been exercised. Furthermore, because of a shortage in films, it was possible that exhibition would not be refused on this picture, except perhaps in theaters where desirable substitutes could be secured from other producers.

In connection with the possible adverse decision by the company's theater department, those opposed to release pointed out that such action probably would lead to attempted cancellation by other major circuits booked to show the picture. These circuits undoubtedly would hesitate to show a Radio picture which Radio-Keith-Orpheum theaters refused to exhibit.

Since the actors receiving screen credit for playing in this picture were not particularly prominent, and since they were under term contract to the company, any objections to its release on their part could be overlooked. Because of the poor quality of the film, however, the actors possibly would welcome the opportunity to avoid all connection with it.

On the other hand, since considerable time and effort had been spent in making this particular film, the withholding of the release might have an adverse effect upon the morale of the company's studio organization by seeming to admit its inability to make pictures comparable to those produced by rival studios. Furthermore, the company recently had changed its production policy from one of specializing in low-price "action" pictures to one of producing high-quality films only. This radical change in policy had imposed an

exceedingly difficult task upon the production department, and hence it was not reasonable to expect it to produce successes consistently. Following this line of reasoning to a conclusion, the company should have expected several films of inferior quality during the 1929-1930 theatrical year. Obviously it would be neither practicable nor possible financially to withhold release on all of them.

The executives favoring release were of the opinion that the public was not particularly interested in motion-picture trade names; hence the exhibition of a poor Radio film would adversely affect the company's name only in the minds of the exhibitors. The latter, they argued, were more or less accustomed to an occasional decidedly inferior picture from each producer, and therefore they would not put much credence in the company's advertised emphasis on quality. They believed, furthermore, that the Radio Pictures trademark had not been established long enough to convey any real meaning to either the public or the exhibitors. This contention obviously shows poor reasoning.

The fact that the picture was booked to play in more than 2,400 theaters with aggregate rentals of \$250,000 was another reason advanced in favor of its release. While it was possible for these theaters to secure substitute spot bookings, the rentals required for such bookings might be higher than those charged for this particular picture. Furthermore, substitute pictures might prove even less desirable; hence exhibitors would prefer to book the picture. From a financial standpoint, some of the executives believed that the film in question might actually earn a net profit for the parent company. Should a reasonable number of the 2,400 theaters show the picture, the revenue derived therefrom might offset the possible losses resulting from its exhibition in Radio-Keith-Orpheum theaters. Over 60% of the total bookings of this picture, including those of the company's affiliated theaters, were on a flat rental basis.

Should the company decide to withhold release, it was quite probable that some of the chains and independent



exhibitors would beg the same consideration for some of the company's other pictures which they were anxious to avoid showing. Such a condition might seriously hamper the company's ability in the future to force distribution on relatively inferior products.

Since the Radio picture booked to follow this one would, according to advance notices from Hollywood, become one of the outstanding hits of the current season, it was believed that exhibitors would discount to a large extent the inferior quality of the picture and whatever losses might be incurred from its exhibition. Furthermore, the company might force bookings on the undesirable picture under threat of refusal otherwise to allow exhibitors to show the one predicted to be an outstanding hit.

Finally, it was not altogether improbable that the picture in question, unless banned for moral reasons, might meet with public approval in spite of executive opinion. There had been many similar occurrences in the case of all companies. The probability of this picture's success was not likely in the larger centers, however, where ultrasophisticated films had a definite though somewhat limited following.

One executive suggested that the company eliminate first-run theater exhibitions and release the picture to subsequent-run houses only. Granted that the first-run theaters would be willing to forego their datings, and protection periods could be adjusted satisfactorily, this plan was not considered advisable. In the first place, subsequent-run houses preferred pictures of genuine entertainment value, especially those which had been exploited widely and had achieved success in the larger theaters. Second, rentals from those second- and subsequent-run theaters which would accept the picture (allowing for probable cancellation) would hardly offset distribution costs.

In the event that it was decided to withhold release permanently, it would be necessary for the executives to decide upon the advisability of producing a substitute picture. Un-



der terms of the company's sales contract, the acceptance of substitute pictures rested entirely with the exhibitor. If such a film proved successful, the company could expect completion of a large share of the contracts made for this picture. If, however, it failed to meet the necessary box office requirements, the production of such a picture would increase the company's losses appreciably.

On the other hand, if the company did not produce a substitute, it would be unable to fulfill its contract, complete its budgets, or perhaps attain sales quotas. Furthermore, the production of a substitute would enable the company to conceal, at least to a certain extent, the fact that it had produced an undesirable film. This fact was especially true in cases where exhibitors had purchased less than the company's entire output and had contracted for the pictures primarily on the basis of film titles.

As far as production facilities were concerned, another film could be made later in the year. Under the existing circumstances, however, the production department was already working under pressure and needed all its spare time for the preparation of the 1930-1931 product. What actually happened to the picture under consideration we have not ascertained. This example is cited merely to throw into relief the factors involved in the problem of disposing of an inferior picture.

Since producers tend to stress the importance of timeliness, it is curious that they have not given more consideration to the temporary withholding of pictures in an effort to secure a more opportune moment for their release. The reasons are probably perfectly understandable. Having a picture in which considerable money has been invested, and on which no returns can be obtained until it has been exhibited, naturally makes such a procedure somewhat more costly. Furthermore, there would be some questions involving the practicability of booking such a picture, since theaters normally buy their year's requirements well in advance and consequently the available screen time is naturally restricted.

Again, with the great majority of pictures, as already has been indicated, one time is about as good as another for release. It is only the occasional picture to which such a practice would be applicable.

## CHAPTER IV

### PRODUCTION (continued)

No discussion of the problems of production can avoid consideration of the cost of producing pictures, particularly since the banking and electrical interests have come to play such an important part. Both these groups naturally are very substantially interested in the control of costs, and it is quite understandable that from time to time those representing them should become impatient with production officials who, having become accustomed to spending large sums of money without being so rigorously checked as they might be elsewhere, seemingly waste a great deal.

An example of this controversy is furnished by the argument which is centered around the use of the star system. (Almost since its inception, the motion picture industry has employed the star system, whereby production and exploitation have been centered largely on a selected few screen personalities.) Since the star system involves the payment of high salaries to actors and large expenditures for personal advertising, producers from time to time have attempted to effect its abolition.

Motion picture actors, in general, are either stars, featured players, small-part players, or extras. This classification is by no means rigid. For example, featured players at times assume star rôles; character actors often are featured; and, less frequently, stars play feature rôles. The elevation of an actor or actress to stardom, while determined by producers, comes largely as a result of public opinion measured in terms of box office receipts. Stardom, as applied to actual production, usually guarantees stars the most prominent part in each picture in which they play, a larger share of camera

time than anyone else in the cast, and headline bookings on the titles and advertising copy.

Stars operate under various forms of contracts, in all of which are inserted special clauses to meet individual requirements. Contracts contain provisions as to the types of rôles to be portrayed, the amount of camera time, selection of costumes, associate players, and hundreds of other variables. Star contracts are for one or more pictures, for a definite time with or without renewal options, or for a definite time with the number of pictures stipulated. Some contracts are exclusive and others nonexclusive. As has been indicated, long-term contracts usually are subdivided into six-month periods. At the end of such periods, the producers have the right to discontinue or renew the contracts. Renewals usually provide for salary increases.

Star salaries vary in accordance with the actors' drawing power, type of contract, etc. Term contracts range upward to \$30,000 per week. In some cases the salaries are paid on the basis of a flat amount each week; in others, on the basis of the ratio of actual working time to a full 48-hour week. In the latter case, production schedules often are arranged to provide for the photographing in sequence of all scenes in which the star appears, thereby minimizing his or her salary. Star salaries paid on single or multiple picture contracts range upward to \$500,000 per picture. In some instances they involve a guaranty and percentage of box office receipts.

The contracts for featured players in general are term agreements with options stipulating a definite amount per week, regardless of the number of pictures in which they are cast. When not affiliated with any producer, featured players are signed under contracts similar to those provided for stars. Their salaries range from \$100 a week upward to \$2,500 or \$3,000.

Small-part players usually sign contracts for specific pictures. Their salaries in general are on a weekly basis, the amounts being dependent almost entirely upon the relative

scarcity of their specific types. Extras are hired on a daily basis; their earnings range between \$5 and \$10 per day. Chorus girls, during periods in which musical and dancing films enjoy public favor, are placed under weekly contracts.

Under the star system, producers are continually searching for stories, plots, and ideas particularly adapted to the characteristics of certain personalities. In many cases, original stories are written for the stars; in others, attempts are made to revise popular stories, stage plays, etc., along similar lines. In most instances, of course, after a company has built up a star through advertising, the tendency is to give the best plays to that star. This practice makes it all the more difficult to determine how much of the success in a given instance is due to the star and how much is due to the play. Certainly there have been notable instances of plays in which no well-known star appeared, but which, nevertheless, have proved unusual box office successes. At times, because of demands of the contract for the production of a specific number of pictures each year, producers are faced with the necessity of using a poor story for a star.

Many motion picture executives contend that the industry's success is in a large measure dependent upon the star system. They believe that a majority of motion picture fans are interested primarily in personalities. Exceptionally popular stories, they agree, will carry a film, but in general the star's name is the principal attraction. Outstanding stars, they contend, can turn an obviously poor picture into a box office success. Granting that the star system is costly, its advocates believe that, in comparison with additional expenditures necessary to add color to a picture without a star, such costs are relatively small. This is especially true, they aver, of expenditures for advertising and exploitation. Furthermore, the larger gross receipts from a picture with a star name compensate for its higher cost. Finally, they believe that, without the star system, the motion picture industry would lose in public favor.

On the other hand, the star system involves many dis-



advantages. Measured solely on the basis of comparative costs, its use appreciably increases the cost of production. It often results in miscasting and the consequential ruination of an otherwise interesting film. Stars represent large investments, yet once they start losing favor their popularity fades quickly. Unless protected by contracts, producers often find it necessary to pay unwarranted salaries to prevent competitors from acquiring the services of particular actors. On the other hand, to grant long-term contracts in the belief that certain players are headed for stardom entails a great risk.

In addition, there are a number of other objections to the star system. Display of temperament often disturbs or prevents scientific management. Then too, there is a definite limitation on available and genuinely potential starring material. In order to make stars known to the public, moreover, studios find it necessary to maintain staffs of publicity men, often assigning a man to the advertising of one star only. Finally, it is averred that, in the last analysis, "the play's the thing" and that, over a period of years, suitable casting and emphasis on the story will achieve the best results.

The first significant attempt to abolish the star system came shortly after the World War. Producers sponsoring the pictures involving such stars and directors as Mary Pickford, Douglas Fairbanks, and D. W. Griffith refused to meet their salary demands, which included both guaranties and percentage of receipts. As a result, a group of well-known screen personalities formed their own company, which was designed to function almost entirely on the star system.

At various intervals, producers have reduced their rosters of stars, substituting therefor featured players. On several occasions, campaigns have been launched to bring a large number of new names into the industry, to provide less expensive players as substitutes for the high-salaried stars, and to increase the quantity of star names. Regardless of

the procedure followed, the ultimate results are practically always the same. Thus an extra chosen for future stardom is exploited heavily. A large investment is made in furthering his or her progress, and, if the pinnacle is finally achieved, the star usually retaliates by demanding a very high salary and perhaps a percentage of gross profits.

Following the advent of sound, motion picture production underwent an almost complete revolution. A large number of accredited screen players were found lacking in histrionic ability; stage players, musicians, dancers, etc., were imported by practically all large studios. Action pictures gave way to transplanted stage plays and musical shows. The microphone took precedence over all else.

A number of the larger studios, believing that these conditions provided a very favorable setting, decided either to eliminate the star system or to relegate it to the background. Emphasis was placed on the play. Actors and actresses were cast to fit parts. Camera time was apportioned in accordance with the dictates of the directors. In addition, star name publicity was minimized; certain stars were reduced to the ranks of featured players or were asked to cooperate in portraying such rôles; outbursts of temperament were not tolerated. Finally, a large number of producers chose to reduce substantially the number of term contracts, both for stars and for featured players, and to substitute therefor single picture contracts. As a result of all these developments, artists' salaries were reduced appreciably.

Although this policy of minimizing the position of the star was successful for a time, with the passing of the novelty stage in the development of talking pictures, producers again considered a reversion to the star system. Box office receipts had fallen off appreciably. There was a dearth of good story material. Stage players, although well known in New York, had in many cases failed to attract the attention of the average "movie" goer throughout the country. Producers found it difficult to introduce new personalities to the public in wholesale quantities, and even more difficult to put

over an average program picture minus a well-known star name.

The Metro-Goldwyn-Mayer Pictures Corporation, producing subsidiary of Loew's, Incorporated, throughout the period of transition from silent to sound pictures adhered rigidly to the star system. At the beginning of the 1930 theatrical year, this company stressed such a policy in all its advertisements. Of the other companies, only the Radio-Keith-Orpheum Corporation had committed itself definitely to the star system. Warner Bros. Pictures, Inc., on the other hand, had announced that it would continue to select casts to fit the needs of each picture. Opinion within the industry still differs as to the advisability of emphasizing star or story. Some companies have announced recently that they intend to stress the play and place less emphasis on stars; others continue to place the highest value on star names. It is decidedly a debatable question. Possibly the public will solve it.

In connection with the problems arising out of the use of the star system, and before going on to other problems involving production costs, mention should be made of the labor difficulties facing the motion picture producer. An example of the type of labor problem which he meets is to be found in the controversy, in 1929, between the producers and the Actors Equity Association, the recognized theatrical labor union. Until the middle of 1929, the activities of the Actors Equity Association had been confined to the legitimate stage and to vaudeville, in which fields it had gained national recognition. On June 5, 1929, the association announced its intent to bring under its jurisdiction the production of motion pictures. Effective as of that date, the association instructed its members to take part in the production of sound pictures only under the terms of the Equity Contract, a contract form which it had issued to take the place of the Standard Form Artists Contract, then in use by most producers. Equity further directed its members to

accept parts only in casts in which all the players were Equity members.

This proposed extension of authority came as a result of the introduction of sound pictures. Such pictures had greatly diminished the popularity of the legitimate stage and of vaudeville. They also had caused large numbers of stage actors, a majority of whom were members of Equity, to go to Hollywood to act in sound motion pictures. Equity leaders apparently believed that these developments might seriously weaken their union. Equity advanced three reasons to justify its position: first, the unfair treatment of artists; second, the alleged failure of motion picture producers to observe contracts; and third, the protection of play producers against the evasion of stage engagement contracts by actors.

There were several major differences between the Equity Contract and the Standard Form Artists Contract. The Equity Contract specified that Equity Shop would be required; that is, all members of a cast who spoke a line or who did work of an individual character had to be members of the association. Equity was not a closed union. In order to become a member, however, an applicant was required to present a bona fide assignment made on an Equity Contract.

The Equity Contract was a term contract, while the Standard Form Artists Contract was an open one. The former called for a definite term of employment, which, unless otherwise designated in the contract, was four weeks. Under the Standard Form Artists Contract, unless a longer period was definitely specified, a player was assured of a minimum of one week's work and of work thereafter until the completion of the photographing of the character he played. In some cases this feature was beneficial to the actors involved, especially when production continued for a considerable length of time and other more profitable work was not available. In many cases, however, when the Standard Contract did not establish definite termination dates, artists



were prevented from signing for pictures, the production of which was scheduled to start in the near future.

The Equity Contract established a 48-hour working week. In defining working hours, the contract specified that Sunday work was to be obligatory only where lawful. Actors working on that day would be paid at overtime rates for a minimum of eight hours. Overtime was also defined. Rehearsals were to be considered as work and paid for as such. No effort was made under the Equity Contract to fix a minimum salary. The Standard Contract, on the other hand, did not limit the number of hours of work that might be required of an actor during any one week for which he was paid a flat salary.

The Association of Motion Picture Producers, an organization which included all companies with studios on the West Coast, refused to recognize Equity. Its members believed that an enforcement of the Equity Contract would place a restriction on the source of acting talent which would hamper seriously the progress of the industry. Furthermore, the producers objected to the unionization of actors the value of whose talent varied from a few dollars to \$10,000 or more per week. A third objection was that use of the Equity Contract would increase the cost of production, possibly as much as from 25% to 100% according to the type of picture.

Equity's cause was weakened by the growth of dissension among the members of the association. At the end of over 11 weeks of controversy, Equity leaders announced that they were temporarily abandoning the struggle. Five months later (January, 1930) there was no indication of renewed activities on the part of the union, and the consensus of opinion was that the 1929 attempt to introduce Equity Contracts into the motion picture field had been definitely unsuccessful.

Turning to the question of production costs, Exhibit 26 gives some idea of both the size and the comparative importance of the items entering into production. Within the



past four years, the problem of production costs has received special attention as the result of two factors in particular. One is the business depression which has prevailed over that period of time. The other factor is the increasing influence which has been exercised by the banking and electrical interests. As a result of these two forces, very substantial progress has been made in the direction of reducing excessive costs. During the time that the sound picture was in the experimental stage, a good deal of discussion was current concerning the comparative costs of producing sound and silent pictures. It seems to be pretty generally agreed that the cost of the sound film is not so much greater than that of the silent film as it was feared that it might be. Whereas during the first months of sound picture production, the cost was anywhere from 35% to 100% higher, it is probable that at present the cost is not more than 25% higher; and there are production executives who feel that even this can be further reduced. The reductions in cost have not been the result merely of added experience in the field of sound picture production.

Studios are now quite generally on a strict budgetary system, and each unit is expected to keep well within its budget. Million dollar pictures are no longer common, and the day of the very expensive musical production and other "stupendous attractions" seems to have passed, at least temporarily. The average cost of pictures in 1931 and 1932 probably ran well under \$300,000, whereas in former years it ran over \$400,000. It was commonly believed that the average cost of the feature productions of the Metro-Goldwyn-Mayer Pictures Corporation in 1932-1933 would be approximately \$425,000; Paramount pictures would average perhaps \$400,000; Fox films would not run over an average of \$300,000; Radio pictures would average under \$250,000; and Warner Brothers pictures, from \$200,000 to \$250,000. As a matter of fact, it is quite possible to produce films of a certain type at a cost of \$100,000 or even less, the pictures having, moreover, real box office value. At the

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## EXHIBIT 26\*

Final Cost Statements †—for Feature Pictures Produced by Pathé in 1930

	"Swing High"		"Night Work"		"Her Man"	
	Comedy	Drama	Comedy		Drama	
	Amount	%	Amount	%	Amount	%
Story	\$1,500	0.5			\$6,000	1.6
Continuity and Treatments	11,599	4.2	\$3,412	1.9	20,457	5.5
Supervision						
Director	9,200	3.4	12,750	7.1	26,150	7.0
Production Staff	3,544	1.3	2,631	1.5	3,820	1.0
Cameramen and Assistants	6,859	2.5	4,101	2.3	7,431	2.0
Recorders	4,779	1.8	3,543	2.0	6,472	1.7
Cast	37,964	13.3	24,098	13.4	44,267	11.9
Extra Talent	22,106	8.0	10,678	5.9	31,307	8.4
Music (Recording)	22,934	8.4	13,016	7.2	13,580	3.7
Wardrobe	18,498	6.7	4,795	2.6	8,947	2.4
Properties	9,954	3.6	7,601	4.2	10,979	3.0
Set Designing	1,007	0.4	1,033	0.6	2,526	0.7
Set Construction	14,060	5.1	11,163	6.2	26,599	7.2
Special Effects	1,829	0.7	76		8,236	2.2
Set Operation	6,775	2.5	2,955	1.6	6,277	1.7
Electrical	15,077	5.5	9,771	5.4	18,829	5.1
Locations	6,664	2.4	5,515	3.0	6,507	1.8
Laboratory	19,542	7.1	15,535	8.6	20,707	5.6
Cutting	3,028	1.1	1,439	0.8	1,846	0.5
Titles	1,696	0.6	142	0.1	2,003	0.5
Stills	1,305	0.5	1,460	0.8	1,537	0.4
General	4,157	1.5	2,261	1.3	10,175	2.7
Total Direct Charges	\$224,077	81.6%	\$137,975	76.5%	\$284,652	76.6%
Royalty	4,500	1.6	3,500	1.9	4,500	1.2
Studio Expense	13,445	5.0	8,279	4.6	42,699	11.5
Recording	20,600	7.5	18,600	10.3	27,700	7.5
Program Preparation	12,000	4.3	12,000	6.7	12,000	3.2
Total Cost	\$274,622	100.0%	\$180,354	100.0%	\$371,551	100.0%
Production Days	28		24		33	

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† Percentage is ratio of item to total cost of the picture.

EXHIBIT 26\*

Final Cost Statements †—for Feature Pictures Produced by Pathé in 1930

"Holiday" Comedy Drama		"Her Private Affairs" Drama		"Paris Bound" Drama		"This Thing Called Love" Comedy Drama	
Amount	%	Amount	%	Amount	%	Amount	%
\$35,000	11.4	\$6,000	3.0	\$15,000	5.6	\$12,500	5.5
6,432	2.1	4,751	2.4	2,696	1.0	3,418	1.5
		9,000	4.5	23,530	8.8	9,000	4.0
15,500	5.1	15,237	7.6	9,075	3.4	14,850	6.6
3,199	1.1	1,663	0.8	4,720	1.8	1,840	0.8
6,844	2.2	3,543	1.8	4,272	1.6	4,271	1.9
2,931	1.0	2,230	1.1	2,373	0.9	3,237	1.4
60,301	23.6	22,742	11.4	34,108	12.7	41,874	18.5
8,973	2.9	5,943	3.0	7,425	2.8	3,631	1.6
8,785	2.9	3,811	1.9	12,133	4.5	3,582	1.6
9,384	3.1	4,136	2.1	7,721	2.9	5,395	2.4
17,974	5.9	7,868	4.0	11,464	4.3	7,362	3.2
3,108	1.0	937	0.5	986	0.4	983	0.4
32,642	12.6	12,478	6.3	6,076	2.3	5,820	2.6
1,853	0.6	792	0.4	3,165	1.2	255	0.1
3,174	1.0	2,131	1.1	3,363	1.2	2,644	1.2
12,835	4.1	6,203	3.1	12,055	4.4	7,719	3.4
867	0.3	244	0.1	3,987	1.5	133	0.1
19,693	6.4	16,646	8.4	17,664	6.6	19,466	8.6
2,343	0.8	1,401	0.7	2,330	0.9	1,958	0.9
455	0.1	292	0.1	240	0.1	386	0.2
1,325	0.4	805	0.4	853	0.3	1,268	0.6
3,626	1.2	6,449	3.2	2,150	0.8	8,318	3.7
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\$257,244	83.8%	\$135,302	67.9%	\$187,386	70.0%	\$159,910	70.8%
4,500	1.5	3,500	1.8	3,500	1.3	3,500	1.6
15,435	5.0	39,936	20.0	47,091	17.5	41,359	18.3
17,700	5.8	13,450	6.8	20,800	7.8	14,100	6.2
12,000	3.9	7,000	3.5	9,000	3.4	7,000	3.1
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\$306,879	100.0%	\$199,188	100.0%	\$267,777	100.0%	\$225,869	100.0%
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30		21		33		24	

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† Percentage is ratio of item to total cost of the picture.

present time the cost of the average feature production amounts to from \$170,000 to \$250,000 although some companies produce films which average above this maximum figure.<sup>1</sup> All companies produce some pictures which greatly exceed \$250,000.

Most of this decrease is the result of pressure exerted on the West Coast studios from outside the industry. It is to be emphasized, however, that this reduction in cost ought not to mean a reduction in the quality of pictures; feature pictures should be better than they have been heretofore and at the same time cost less to produce. It is quite true that many a director has said that this is impossible, that if costs are cut quality must suffer. These directors have insisted that it is too much to expect that they can meet the very general demand for a higher quality of picture and at the same time be placed on a strict economy budget. There is a curious bit of psychology involved in this point of view. It is said within the industry, for example, that the cost of production bears no relationship to the selling price or to the box office value of a picture and that, this being the case, there is no necessity for placing a watchdog over the treasury. It is said also that the emphasis should be placed on quality and that, if the quality desired is attained, then substantial box office receipts will follow and a profit will be realized. In other words, it is contended that the cost emphasis is misdirected effort. Attention is also called to the fact that some pictures costing \$1,000,000 or \$2,000,000 or more have made a profit for the producer, the distributor, and the exhibitor. In reality most of such reasoning is beside the point. It is true that pictures which have cost stupendous sums have returned a profit. It may be true, also,

<sup>1</sup> According to Ralph A. Kohn, treasurer of Paramount Publix, in opposing the receivership application filed against that corporation in January, 1933, twenty-two of the pictures included in the company's production program for 1932-1933 ranged in cost from \$79,000 to \$1,135,000 ("One Hour With You" featuring Maurice Chevalier). The latter figure was exceptionally high. Excluding it, the average cost of the remaining pictures in the list was \$311,454. (As reported by *The New York Times*, January 31, 1933).

that the selling price of a picture does not bear so close a relationship to its cost of production as prevails with some other articles.

Two facts, however, stand out beyond controversy. One is that, had costs been kept within reason, the profits on these productions would have been greater. In fact, the very profit realized from them tended to obscure the serious and avoidable wastes in the production of those pictures. The other fact is that, in the days when less attention was given to the budgets than has been given during the past months, pictures were not of so good a quality as one might have desired. In other words, the popular clamor for better-quality pictures originated before the demand for budget reduction. If directors could not make good pictures when their budgets were not supervised, it is no defense against a demand for cost reduction to say that such procedure will prevent creation of more worth-while pictures.

The attempts to reduce the cost of production naturally have wide ramifications. Department heads are asked to save on material, to use fewer employees; wherever possible, departments have been eliminated and merged with other departments. Other changes in organization have been effected in an effort to centralize responsibility; in some cases new departments have even been created to increase the efficiency with which money is expended. The general attempt to reduce the overhead and to standardize costs are reflections of the demands which have arisen for economy.

Two steps, each apparently an experiment at first but subsequently adopted as permanent, may be mentioned. One of these was instigated by Paramount Publix and the other by Fox. The adoption of the budget idea in itself was probably the immediate cause which impelled the two acts. One of these was the stationing of a budget controller in the studios with power over all expenditures unless overruled by a higher official in the home office. The other was the creation of a separate division in the eastern home office to include advertising and publicity departments. This plan



was initiated to centralize the control of the advertising and publicity functions, which formerly had been divided among the production, sales, and theater divisions. Since this change the company's activities may be grouped into five operating units: production, story, sales, theater, and advertising.

The points at which money can be wasted in production are, of course, innumerable. No attempt can be made here to consider all these possible wastes. Attention may, however, be directed to a few of them. Thus, occasionally as many as 30 and even 40 "takes" may be utilized for a single scene. "That means everything stops and starts as many times until the director gets what he wants, regardless of how infinitesimal the action and the dialogue may be. A matter of ten 'takes' is ordinary, even when as many as six cameras may be grinding on the scene for 'one' boy or girl separately and 'two' boy and girl together shots, full, medium, or close up. The current thought is to first perfect the scene in rehearsal and then 'shoot' as previously planned in cameras, besides getting the entire script in the shape desired before letting a director start on the assignment."<sup>2</sup>

A further factor which increases the producer's costs is the necessity of securing protection against the charges of infringement. Every motion picture producer recognizes that great care needs to be exercised to insure protection against such charges, not only in the use of plots but in the use of titles as well. With the introduction of talking pictures, the problem has become increasingly serious and the costs of defense against charges of infringement are in the aggregate very high. A case in point is that of *Anne Nichols v. the Universal Pictures Corporation*<sup>3</sup> which involved a claim for damages amounting to \$3,000,000, and it is understood that the costs of defense against the suit amounted to \$50,000. The Universal Pictures Corporation was held to be blameless; nevertheless, the cost of establishing its inno-

<sup>2</sup> *Variety*, January 21, 1931.

<sup>3</sup> See *Motion Pictures* by Howard T. Lewis, Harvard Business Reports, Vol. 8, p. 217-225.

cence had to be borne by the defendant. Thus, even when successful in protecting himself against such suits, a producer must reckon with the expense of such protection. The situation is the more serious because, in addition to many sincere suits honestly brought, there are probably a great number of suits brought with motives which are at least tinged with criminal intent. Practically every important producer is confronted with this problem at one time or another. For example, Cecil DeMille was faced by such a situation in the production of "The King of Kings" and "The Ten Commandments". Under the present conditions, motion picture producers generally refuse to negotiate for any stage play that is in any manner involved with either an actual suit or a threat of suit.

The difficulty of determining when infringement or plagiarism exists is far from simple. In the Nichols-Universal case the complainant sought to show infringement by the segregation of the scenes of the play and of the picture and the extraction of the ideas or emotions forming the collocation of the play and a comparison of them with the ideas or emotions of the picture, the theory being that if these were similar, the underlying ideas, the emotional themes, the basic characters, and "the crucible" must be similar, and hence infringement followed.

In presenting an opinion the court said in part: "The law relating to infringement and plagiarism is quite well settled. But in some instances the practical application of it is not simple, because of the difficulty of determining what the precise points of similarity or dissimilarity between two dramatic or other compositions are. Mere ideas are not protected, but the manner of expressing the same ideas may be secured, and the line differentiating the idea from the expression of the idea is not always clearly defined."

It has been suggested that some improvement in the wording of the law governing infringement would be desirable. It is difficult, however, to word a statute so as to cover the fine shades of meaning which are necessarily in-

volved in many of the cases. The more fruitful suggestion perhaps has been that wherever possible such difficulties be settled by arbitration. Unfortunately such a procedure is not always applicable or acceptable. Still another suggestion is that the English practice be followed, which provides that a complainant must satisfy a representative of the court that he has real grounds for action before being permitted actually to institute a suit, and that, in order to reimburse the defendant for the expenses of trial in the event that the infringement is not proved, he be required to post a bond in those cases where suit is brought. On the whole it would appear that this final proposal has much merit, although something may also be done to supplement such procedure in accordance with the other suggestions mentioned.

Another serious waste is in story preparation. A heavy cost is developed before a camera turns at all. One of the studios, it is claimed, has discovered that its average cost per picture, between the time that the story is purchased and the time that it reaches the production stage, is \$50,000. In other large companies, the amount runs from \$15,000 up to that figure. Much of the waste in this period of story preparation is due to ignorance among minor executives as to what they want in the matter of treatment. Trying out one writer after another on so-called "adaptation" before getting what is considered a suitable treatment is very costly. It is said not to be uncommon to have up to twelve writers working consecutively on the story during this preparation period. In one case it was reported that a studio had seventeen scenarists, each receiving from \$500 to \$2,000 a week, working on a story before it was considered ready; nine of these were working simultaneously; and the story was a standard classic which should have been comparatively easy to prepare. Fortunately some of the large studios have decided to eliminate this cost. It is reported that at least two large studios have committed themselves to stop the promiscuous engaging of every writer who happens to get a novel printed or a play produced and who has had absolutely no

experience in the production of motion picture scenarios, a task which is commonly believed, and rightly so, to be quite unlike that of any other form of writing.

An interesting question confronting every producer-distributor, and one involving the problem of production costs, is that of producing newsreels. Practically every exhibitor agrees that no program is complete without a newsreel. There seems to be a general unanimity of opinion that, while other short subjects such as comedies *may* be used to supplement the feature picture, the newsreel *must* be used. This being the case, it was a perfectly natural thing for producers, who wished to be in a position to offer an exhibitor a complete program, to add a newsreel to their other offers.

However, the problems involved are not quite the same as those growing out of the production of short subjects. There need be no duplication with comedies; the plots, comic skits, and the actors are in each case different. The newsreel, however, presents the important and interesting news of the day in visual form. This of necessity means that, if either local or national public interest is to be served, the same subject must be covered by every producer of a newsreel.

Consequently, the number of newsreel services has increased steadily. In 1925, there were only four newsreels being made, the cost of production of which is estimated as about \$75,000 a week and the total income roughly \$115,000 a week. In 1928, there were six newsreels being made, the cost of production being around \$125,000 weekly and the total income probably not over \$110,000 weekly. Each of the six newsreel companies maintained a regular staff of about 100 camera men throughout the world to obtain pictures of news events. These men were paid regular salaries varying from \$50 to \$200 a week. In each city in which a company maintained a camera man, it either owned or rented on occasion motor cars or trucks for transportation of cameras, camera men and film. These companies also dealt with independent "free lance" camera men, who



offered pictures which they had taken and were paid only for the pictures used. This payment might vary from as little as 50 cents per foot to over \$100 per foot, depending upon the subject.

Every important event of which notice is received in advance is photographed by several camera men from each company. On Colonel Lindbergh's return to New York after his transatlantic flight, about 10 camera men were used from each company to photograph his reception and ride up Broadway. The covering of sudden occurrences, such as storms, is dependent more upon the watchfulness and the "news sense" of the camera men than upon the number of camera men. The regular and free lance camera men employed by each company cover more or less completely all parts of the world. The race to get pictures of important events becomes very keen in an effort to get the films developed, edited, and delivered to theaters in the shortest possible period of time, all of which tends to run up the cost. Generally speaking each newsreel company releases two issues per week covering national and international events of importance, but, frequently too, minor events of interest to only a limited section of the United States. They commonly make approximately 200 prints of each issue, each newsreel being from 850 to 950 feet long. The service is usually sold as a unit of 104 issues, occupying the exhibition time of a theater for a period of 52 weeks. Some theaters purchase more than one newsreel service and edit them by making up a composite newsreel service of their own appearing on their screens under their own names. The cost of the service varies widely, being as low as \$1.50 in some instances and \$100 per week in others.

In addition to running up production costs, all this intense competition has another unfortunate result in that patrons of theaters are offered newsreels in many cases containing records of events of no particular interest to anybody. Being limited by the scope of its organization and the finances at its command as well as by the inability of those



responsible for the service to sense events of public interest, the exhibitor and the patron are confronted by newsreels of very mediocre quality at times. Apparently the producer is in a position where he is compelled to get out an issue and he attains mere footage at the expense of quality and interest.

Another reason for the deterioration of the newsreel has been given by someone in the industry.<sup>4</sup>

For a great many years newsreels suffered from a relative unappreciation at the hands of the trade. They were considerably more important to the more intelligent and influential fraction of the audience than the buyers of films were aware. With the coming of sound and talk an opportunity presented itself to reestablish newsreels on a new basis in the industry and to place them in an enhanced position with the public. Nothing of the kind happened.

The zest has gone out of the newsreel camera men and their editors chiefly because the fate of the product is being decided not by performances in the field of adventure and on the screen, but around the tables in sales conferences and trade-offs of playing time. The truth is that a really important feature picture can in a fashion drive through its own way to the screen and the market, but the best newsreel on earth could not importantly affect its gross by sheer quality of performance.

To meet the difficulties caused by intense competition, various persons have from time to time proposed an association of newsreels. The individual companies were to refrain from gathering their own news scenes, and an associated company was to organize a news picture gathering service throughout the world; each company could inspect the films and select from them the scenes which it wished to use. It would be at liberty to make up its own newsreels from these prints as it might see fit and sell them through its own distributing organization. Nothing has come of these proposals. Although the number of newsreels<sup>5</sup> in existence varies from time to time, those best known in the

<sup>4</sup> Terry Ramsaye, in the *Motion Picture Herald*, November 14, 1931.

<sup>5</sup> The experience of Allied States in the newsreel field is discussed elsewhere in this volume. Cf. *Motion Picture Herald*, Apr. 29, 1933, p. 7.

On March 1, 1932, an independent newsreel for the State Rights Market, the first of its kind, was announced under the name, *The American Newsreel*, edited by Lowell Thomas.

field are: Paramount Newsreel, Fox Movietone News, Hearst Metrotone News, Pathé Newsreel, and Universal Talking Newsreel.

Much has been said in times past about the heavy losses in production which result from temperamental acts on the part of stars or other players. It is true that there can be standardization in the trade only up to a certain point. It is said that, where the all-important personal end of the business is concerned, standardization is impossible and that it is this dependence on personalities and temperament that makes the industry unique and less liable to expense reduction than other businesses. There is, of course, much truth in this. In fact, it is doubtless correct to say that standardization at this point can never reach the degree which it can in many other industries. Acting, writing, and directorial talent cannot be thrown into the same category as unskilled workers in the steel mill. Nevertheless even at this point, it can scarcely be said that no control at all is possible. The health of a lead is, after all, subject to some measure of control. The amount of money sometimes spent for guests and unnecessary entertainment of stars and other players can easily be carried to an extreme and be made an excuse rather than a reason. An indirect method of mitigating temperamental outbursts is to have newer and cheaper stars ready to replace the temperamental stars on immediate notice. Another result of the demand for economy has found expression occasionally in avoiding the use of a "solo" star in a picture. "The old star system has been revolutionized, until now some of the leading producing companies are entering the new season with the word 'vehicle' practically banned in schedule language. Paramount, for example, will go through 1932 with only one player actually starred. That is in the case of Harold Lloyd who is in a class by himself

with his own unit and the company literally nothing more than a distributor.”<sup>6</sup>

It is to be feared that in too many cases reliance has been placed upon the reputation of the star to make a success of a picture, instead of relying as largely as should have been the case on the character of the story. There are probably two reasons for this. One is that, knowing that a star has either created or had created for him a very substantial following among patrons of the theater, the producer has felt that less consideration need be given to the play itself. The attitude has sometimes been: “We have a good star with very real drawing power; now we do not need to worry so much about the scenario—the star will carry the picture regardless of the plot.” Then, of course, there has been another reason for this attitude. A star may be engaged under a contract to make a stipulated number of pictures within a given period of time. In order to make the most of the contract the producer has been more or less compelled to put the star into a picture of some kind, even though he knew that it was inherently weak or, for some reason, not altogether suited to the actor in question.

The same temptation to depend upon something other than the play has been observed in the attitude of the industry toward certain technical improvements. It is not meant for a moment to imply that technical improvements have not been worth while. They are, and of course should be encouraged in every feasible manner. Every technical advance should cause the play itself to become more effective. If, therefore, a producer relies upon what is for the moment a technical novelty to augment box office receipts, he is again losing his sense of perspective.

The introduction of sound may serve as an example of what is meant. No change ever came to any industry that was more far-reaching in its effects upon practically every operation in the industry than the introduction of sound in

<sup>6</sup> *Variety*, October 13, 1931.

the motion picture industry. Moreover, it came with terrific suddenness, and scarcely anyone was prepared for it. It is, therefore, perfectly natural that its limitations and its value could not be determined at once, and that there were a great many very necessary experiments as to the type of picture to which sound was best adapted and as to the manner in which it could best be used. All this is a real justification for a certain amount of floundering in the early days of sound. At the same time it is also true that, instead of attacking the real question, producers in time tended to rely upon the novelty which this innovation created to draw people to the cinema. In other words there was a temptation, not infrequently yielded to, to depend upon the novelty aspects of the play rather than upon the scenario and the acting to hold patrons of the motion picture theater. As has been suggested, there was some justification for this, since many companies were forced into the use of sound by competition before they were ready to launch out in this new direction. Moreover, there is something to be said for the idea that the novelty appeal might properly be resorted to in the interim between the appearance of sound pictures and a decision, however tentative, as to the proper placing of this accessory to the art.

The tendency of the producer from time to time, to place emphasis on the incidental thing rather than on the play, may be illustrated in other ways than by reference to the experience with sound. Every now and then considerable discussion arises concerning the use of color in pictures. By 1929, there were in the United States over 20 colored-film companies each of which claimed its own basic patents, although with the exception of the Technicolor and Pathéchrome processes none of these companies had offered a product to the theatergoing public. The use of color is still very largely experimental, and it must be said that in most cases its use detracts from rather than adds to the appeal of a picture. Even in the filming of musical comedies and historical dramas and travelogues, the coloring frequently has



been so unsatisfactory that it is very doubtful whether anything has been added through its use. The difficulties are largely technical and will unquestionably be overcome in the course of time. There is some question even as to this, inasmuch as there probably are many pictures to which the introduction of color would add but little, quite possibly not enough more to warrant the additional cost involved. Yet most producers have felt urged under the influence of competition to bring out films in color. So generally has this proved to be the case that the Technicolor Motion Picture Corporation, by far the largest concern interested in the development of color, found its plant taxed to capacity and, furthermore, found itself practically in a position to dictate its own terms. It would appear that for the present color has been definitely set aside. It has added a tremendous amount to the cost, and some of the large producers argue that it has not added anything to the box office appeal of a picture. Color cameras have proved expensive to use, and the processes to date are not possessed of a clarity of definition combined with an economical and easily and quickly applied process. All of which is said, not particularly with the purpose of discussing the future of color, but for the sake of calling attention to the fact that many producers rushed to its use partly because somebody else started in the same direction and partly because they thought that it might provide a stimulant to public interest. The whole experiment merely confirms again the old conclusion that "the play's the thing".

The use of wide film as an attempt to bolster up a weakness in playing material does not offer quite such a definite record of experience as either color or sound. The reason for this is probably that wide film required a wide screen on which to throw it. It is also true, of course, that there was not a standardization of the width of the film. In lieu of the standard 36 millimeter film, Fox established a width of 70 millimeters and Paramount started at 56, later increasing its width to 65. The Spoor wide film used by RKO was 65



millimeters in width. The inability of producers to get together on a standard width possibly was a deterrent to any extensive adoption of the new film. Also, of course, there were serious problems as to its use growing out of the necessity for establishing screens in the theaters in which such film was to be exhibited. There is another reason why wide film has not been so generally experimented with in theaters. Producers, if they can avoid it, do not care to be rushed into a more or less revolutionary change of this character. In other words, they want to be prepared for the change, profiting by their experience with sound. These facts, plus the further consideration that wide film, like color, is adapted to certain types of pictures and not to others, have made the development of this experiment somewhat slower than in the case of some other devices, such as sound.

In the case of that other technical advance so commonly referred to as third dimension, the statement of the problem is enough to suggest to anyone at all familiar with the difficulties involved that third dimension pictures as conceived by most people are still a considerable way in the future. Here again, millions of dollars have been spent in an effort to get third dimension in both widths. When perfected, such a change will be revolutionary for production as well as for exhibition. It involves, of course, two essential conditions as pointed out by Dr. Herbert E. Ives of the Bell Telephone Laboratories, Incorporated:

The essential conditions for producing pictures in stereoscopic relief are two: First, separate pictures must be made from different points of view, corresponding to the two eyes; second, each eye of the observer must receive its appropriate view . . . If stereoscopic projection is to be achieved in such a form that a large group of observers may simultaneously see the projected picture in relief, the distribution of the appropriate views to the two eyes must be accomplished for each observer. There are two places where the distribution may be made: the first is at the observers' eyes, the second is at the screen on which the picture is projected.

Having gained some idea of the multiplicity of problems involved in the making of pictures, we are now ready to consider some of the more vital problems to be met the distribution of pictures to exhibitors.

## CHAPTER V

### BLOCK BOOKING

BECAUSE of the publicity resulting from the action of the Federal Trade Commission and of a substantial number of independent exhibitors, it is probable that the problems revolving around what is commonly called "block booking" have been brought to the attention of the general public to a greater extent than have most of the commercial problems of the industry. As usually happens, the layman's ideas on this problem are largely those gained from newspaper dispatches and consequently are distorted as frequently as they are sound. There is ample justification, therefore, for devoting a considerable amount of attention to this method of sale, both because it is extremely important in itself and because the facts are so little understood by those outside the industry.

Block booking as a business practice may be defined as the simultaneous sale to a distributor of a number of motion pictures for release and delivery to the exhibitor over a period of time, the pictures being offered as a group and the aggregate price being in part dependent upon the quantity taken. If the exhibitor accepts the entire block as offered, the price generally is lower per picture than if he selects a smaller number of pictures included in the block. Some distributors have been accused of offering their blocks of pictures on an "all or none" basis, or in other words refusing to sell an exhibitor any of the pictures in a block unless he takes the entire block as offered.

The practice is one of long standing. As far back as 1923, complaints brought by motion picture exhibitors against the practice of block booking culminated in an action before the Federal Trade Commission against the Famous Players-

Lasky Corporation. The principal charge of the Federal Trade Commission's action was directed against the corporation on the ground that it was seeking to restrain competition. In connection with this charge, various practices were attacked. For example, the company's policy with regard to theater acquisition was alleged to be unfair. Among the various practices which the Commission charged Famous Players-Lasky Corporation with using as a means toward restraint of competition, none assumed a more prominent place than that of block booking.

This method of sale was attacked on the grounds that it limited the exhibitor's choice, often forcing him to take pictures which he did not want; that it assured the distributor an income on all pictures regardless of their quality; that it caused overbuying on the part of exhibitors; that it enabled a distributor to usurp the playing time of exhibitors to the exclusion of other distributors; and that it had other harmful effects. In the course of its investigation the Federal Trade Commission conducted extended hearings to determine whether or not block booking should be ordered stopped as an unfair trade practice.

While the investigation of the Federal Trade Commission was in progress, Senator Smith W. Brookhart of Iowa, in an effort to hasten the settlement of the block booking problem, introduced into the United States Senate an anti-block-booking bill <sup>1</sup> which provided with regard to block booking that ". . . it shall be unlawful . . . to lease or offer for lease for exhibition in any theater or theaters copyrighted motion picture films in a block or group of two or more films at a designated lump-sum price for the entire block or group only, and to require the exhibitor to lease all such films or permit him to lease none; or to lease or offer for lease for exhibition such motion picture films in a block or group of two or more at a designated lump-sum price for the entire block or group and at separate and several prices

<sup>1</sup> Senate Bill 1667, Seventieth Congress, First Session.

for separate and several films; or for a number or numbers thereof less than the total number, which total or lump-sum price and separate and several prices shall bear to each other such relation as to operate as an unreasonable restraint upon the freedom of an exhibitor to select and lease for use and exhibition only such film or films of such block or group as he may desire and prefer to procure for exhibition . . . .” Certain testimonies at the hearing on this bill before the Interstate Commerce Committee of the Senate are presented here because they explain more fully the attitude of certain exhibitors toward block booking than did some of the testimonies before the Federal Trade Commission in its case against the Famous Players-Lasky Corporation.

Except for the United Artists Corporation, virtually all large distributors and most smaller distributors practiced block booking. The distributors who handled only five or six pictures per year, however, seldom sold in that manner. Several different types of block booking were in use.

The Famous Players-Lasky Corporation each year, as soon as its program was announced in the spring, sent its salesmen into the field to sell its pictures to the exhibitors in groups or blocks. In its brief the company stated: “These blocks vary from 10 to more than 40 in one block; Famous Players-Lasky Corporation has never had more than 40 in one block. Its average number per block since 1920 has been about 25. It has never offered less than two blocks per year and in some years as many as four blocks.” It was the goal of every salesman as far as possible to sell each block in its entirety to each exhibitor in his territory. The salesmen were instructed, however, whenever they found it impossible to sell to an exhibitor a block as offered, to try to sell him one containing a smaller number of pictures. The salesmen’s instructions permitted them, when selling an exhibitor an entire block as offered, to accept a lower price per picture than would be acceptable when selling a corresponding exhibitor a smaller number of pictures.



Motion pictures were not sold at any standard price. The price on each picture, which was the result of a process of bargaining between the distributor and the exhibitor, varied according to the number of seats in the exhibitor's theater, the type and location of the theater, the value of its competition, the protection required over other theaters, the reputation of the theater, etc. It was said<sup>2</sup> that in the progress of negotiations with an exhibitor the distributor's salesman frequently tried to compel a sale of the entire block by making the statement that if the exhibitor did not buy all of a block he would not be permitted to buy any, but that, unless the salesman was able to dispose of the entire block to a competitive theater, he always was willing to sell such individual pictures as the exhibitor might select.

Sidney Kent, at that time general sales manager of the Famous Players-Lasky Corporation, testifying before the Federal Trade Commission,<sup>3</sup> said:

The element of compulsion in block booking is bound up to the degree of salesmanship, quality sales effort, that you can bring upon an exhibitor to get him to buy, as a matter of negotiation, the greatest percentage possible of your output, and everybody tries for that strenuously.

Q. And the degrees of effort put forward vary without limit, do they not?

A. Yes, I think that is true.

Q. And so far as Famous Players is concerned, does it ever stand pat and refuse to sell an exhibitor who does not want to take the entire block?

A. Not to my knowledge.

In the same way the Universal Pictures Corporation sold most of its feature pictures in blocks. It also had a special service particularly designed for smaller exhibitors, known as the Universal Complete Service Plan, which was a type

<sup>2</sup> *Federal Trade Commission v. Famous Players-Lasky Corporation*, et al., record of testimony, pp. 17384-17393.

<sup>3</sup> *Ibid.*, pp. 17411-17420.

of block booking. Subscribers to this service were entitled to receive each week during the period of the subscription a complete program composed of a feature picture and the necessary short pictures, all to be selected by the exhibitor from the pictures released by the Universal Pictures Corporation. A few of the very best pictures each year were excluded from this service. The International Newsreel, which was distributed by the Universal Pictures Corporation for the International Newsreel Corporation, was not included in the service.

Another large distributor of motion pictures, First National Pictures, Incorporated, practiced another method of block booking. This company had been organized as a co-operative buying association in 1917 by a group of 28 exhibitors who were dissatisfied with the kind of pictures then being offered by the producers. Later it had started producing its own pictures. The original 28 exhibitors and those who subsequently joined the company signed contracts whereby First National Pictures, Incorporated, licensed and required these exhibitors to show all the pictures which the company itself might produce.

Educational Pictures, Incorporated, which released only short pictures such as comedies and newsreels, advertised and released its pictures by series without giving emphasis to the individual picture. Its productions were usually listed, for example, as "10 Charlie Bower Comedies, 8 cartoons, 10 Lupino Lane Comedies", etc. Its salesmen attempted to sell as many series as possible in a block to each exhibitor. As regards its newsreels, Educational Pictures, Incorporated, like other producers of newsreels, sold a service calling for two issues per week for one year. The reels of news films never were sold individually. Other producers of short films released their productions in the same way.

The practice of selling pictures in blocks has been common among distributors since about 1920. The Famous Players-Lasky Corporation, in its brief in reply to the Federal Trade

Commission, outlined the historical basis of block booking as follows: <sup>4</sup>

The practice of block booking, in its essential substance, has been rooted in the industry since its inception. The practice is directly evolved from the old service idea, under which entire programs were furnished to exhibitors, and which is frequently referred to as the "program" system . . . .

. . . .

. . . Shortly after the formation of the General Film Company, prices for pictures were divided into three classes: (1) for films shown 1 to 10 days after their release date, (2) for films shown 10 to 30 days after their release date, and (3) for films shown 30 to 60 days after their release date. It was customary for exhibitors to contract for a supply sufficient to consume all the exhibition time of their theaters for the entire week for an indefinite period in the future.

. . . .

While some exhibitors preferred the service rendered by the General Film Company to that of the Universal or Motion Picture Distributing Sales Company, it never occurred to them to use some of the pictures furnished by one service and some of the pictures furnished by the other. Of course an exhibitor who changed his program frequently might arrange with one company for service on certain days of the week, and with another company for service on other days. To say that this method constituted an illegal sales method and was a method of restrictive and tying contracts is to forget entirely that the distributing companies of that early day were not licensing individual pictures for exhibition but were selling a film service.

That the service character of motion picture distribution persisted at least until 1917 is shown by the price schedule [p. 148] for Paramount pictures in effect between 1914 and the fall of 1917.

As the industry progressed to the point where it was realized that it was possible for different pictures to be of differing qualities, distribution methods underwent a change. . . . The recognition that these pictures as individual entities differed in quality came about principally because of the tremendous importance which was attached to the presence of a certain star in a given motion picture. . . .

. . . .

<sup>4</sup> Brief on behalf of the Famous Players-Lasky Corporation in answer to supplemental brief for the Federal Trade Commission—Docket 835.

The star series method of licensing the exhibition of motion pictures was generally adopted by the trade between the years 1917 and 1919. . . . It was gradually abandoned, and about 1920 or 1921

Schedule of Prices for Paramount Pictures  
Price per Picture

Population, Towns of	1 Day	2 Days	3 Days	One Week	
				1 picture double 3 days' price	2 pictures double one picture price
5,000	\$25.00	Advance	Advance		
6,000	27.50	20%	30%		
7,000	30.00	for two	for three		
8,000	32.50	days	days		
9,000	35.00	....	....		
10,000	37.50	....	....		

the then existing methods of selling motion pictures were almost completely replaced by the present generally used method of block booking, that is, the offering at one time of a "block" composed of a number of pictures to be released over a period of time.

Some of the distributors had tried other methods of selling and all distributors had considered them; with a few exceptions such as the United Artists Corporation's plan, however, no plan had been worked out that, in the minds of distributors, met the needs of the situation as well as block booking.

In defense of block booking, distributors testifying before the Federal Trade Commission advanced five distinct arguments: (1) it was simply wholesaling applied to the sale of motion pictures just as wholesaling was applied in the sale of ordinary commodities; (2) it reduced the cost of distribution, thus benefiting the distributors and, in turn, the exhibitors; (3) it simplified the buying problem of exhibitors by making it possible to obtain a year's supply of pictures in a few large purchases; (4) it assured a producer a definite income which enabled him to make better pictures than he otherwise could have made; and (5) it had been found more successful than any other method that had been developed by any distributing company.

Several distributors testified that the selling of pictures

in blocks was simply a wholesale type of selling as opposed to the alternative method of selling each picture individually. Although the different pictures were not precisely similar to each other as were the different units of most commodities, it was claimed that block booking had the characteristics of wholesaling in that it involved the sale of quantities of pictures at lower prices per picture than if they were sold individually.

The distributors maintained that block booking, by increasing the size of the average order from each exhibitor, enabled them to send salesmen to the smallest exhibitors. The block purchases of even the smallest exhibitors were sufficiently large to warrant the necessary sales expense. Furthermore, it was demonstrated that if pictures were sold individually, and a salesman sent to an exhibitor each time a new picture was released, the selling expense in the case of the small rural theaters would be more than the rentals received. Many small rural theaters paid as little as \$7.50 per week for features. Without block booking distributors would have been reluctant to serve such theaters. The statement was made by an executive of a large distributing company that it cost at least \$10 to make a call on a theater.

C. C. Pettijohn, general counsel for the Motion Picture Producers and Distributors of America, Incorporated, an association of which the Famous Players-Lasky Corporation was a member, said at the hearing on the Brookhart bill: <sup>5</sup>

A further effect of abolishing this sales system would be to increase the price of the pictures. It is elementary to say that one can wholesale his product more cheaply than he can retail it.

A distributor can make a better price on a group or block of pictures than on one or two, since the sales cost is thereby diminished. The selling of motion pictures, one at a time, at such prices as \$7.50, \$10, and \$12.50 for feature pictures, cannot be continued if this bill becomes law. The traveling expenses of a salesman alone, to a theater 50 miles from an exchange center, would be greater than any rental

<sup>5</sup> Report of hearing on Brookhart bill, p. 183.



to be gained from the account. Over 5,000 of the 20,303 theaters are located in towns with a population of 2,500 or less. These theaters rent complete picture programs for as low as \$5 a night, because by contracting for their programs in groups the selling costs of the distribution are so low that the pictures can be rented at this minimum figure. If the distributor had to sell each one of these small theaters each picture separately, the distribution cost would rise to at least \$25 per picture or program, and in some cases it would reach \$50. The producers and/or distributors, being compelled to sell their pictures separately with a resulting large increase in cost of distribution, would have to increase the prices of their pictures, and the exhibitors having to pay more for their pictures would have to increase their admission prices which the public, as is always the case, would have to pay. But when these admission prices are so greatly increased that they will become prohibitive—and that is what will occur—the public will refuse to go to the theaters and thousands of owners of the smaller theaters in the cities and towns throughout the country will be forced out of business. In my opinion one of the effects of this bill will be to eliminate automatically one-fifth of the motion picture theaters from the industry, and I submit that the abolition of the right of these distributors to wholesale their product and the imposition of these price-fixing provisions would be an unwarrantable interference with private business.

It was maintained also that block booking simplified the exhibitor's buying problem and enabled him to book an entire year's program in advance. Felix Feist,<sup>6</sup> general sales manager of the Fox Film Corporation, testified that an exhibitor buying in blocks could ascertain early in the season just what his program for the season would be. Since he would know what stars especially popular with the public were to appear on his screen and when they were to appear, he would have the opportunity to arrange his program most effectively. Mr. Feist maintained that, if the exhibitor bought pictures individually, he would not know in advance what his program was to be.

That block booking guaranteed a definite income on all pictures was conceded to be of advantage to producers and

<sup>6</sup> *Federal Trade Commission v. Famous Players-Lasky Corporation, et al.*, record of testimony, pp. 17384-17393.

distributors, who thereby were enabled to stabilize their programs, but many distributors maintained that it also benefited exhibitors. Producers operating under these conditions would find it possible, having a definite minimum income with which to work, to make pictures of higher average quality than they would make if they had no assured income. While some pictures undoubtedly would fall below the level of standard of the group, distributors maintained that these pictures probably would be fewer in number under this system than under any other.

On this particular point Mr. Feist testified that, in his opinion, block booking was the only economical method of selling motion pictures that had been devised. Like wholesale selling it enabled the distributor to sell a number of pictures in one group at a much lower price than would have to be charged per picture if the pictures were sold individually. In actual practice a distributor would sell an entire block at a lower price per picture than he would charge for a few pictures from a block. This difference in price represented the additional expense of making individual sales. "From the producer's point of view, if you could not set up your program so that you could produce a number of pictures, the price would go 'way up out of reason" to a point the exhibitor could not afford to pay.

R. H. Cochrane, vice president of the Universal Pictures Corporation, testified that his company offered to exhibitors in one block the pictures which the company expected to release during the year. In this manner the company's salesmen were able to sell the entire year's program of pictures at one call. He testified that he considered this method of selling comparable to wholesaling in other trades and that those exhibitors who bought the entire block were given the benefit of a wholesale price. The price per picture became higher and higher to those exhibitors who took fewer and fewer pictures. Mr. Cochrane further stated that, as practiced, block booking did not imply any element of compulsion; all salesmen exerted every possible effort to effect a

sale of the entire year's program of pictures with every exhibitor, and the final result depended upon the bargaining ability of the parties to the negotiation.

Mr. Cochrane testified that his company had tried to sell pictures individually but that this method ". . . ran up sales cost to such an extent that we simply could not go on with it. We had to charge so much for the pictures in order to cover the sales cost on the repeated trips of the salesmen to every exhibitor, and we had to go into block booking to get anything at all. The only place where we do that (sell individually) now is on what we call superfeatures—a picture that is big enough to justify a salesman on that particular picture." Mr. Cochrane said that the Universal Pictures Corporation produced from two to five superfeatures each year.

The Famous Players-Lasky Corporation stated that it had made two attempts since its adoption of block booking to sell pictures individually, but that both attempts had been unsuccessful.

In its reply brief the respondent said:

In 1919, Famous Players-Lasky Corporation sought to put into effect a more selective method of selling pictures than the then existing star series system. The plan resulted in tremendously increased selling costs necessitating increased prices to exhibitors (about which much has been said by Commission's counsel in this proceeding) and exhibitors would not support the policy. It had to be abandoned.

Again, in 1923, after the taking of testimony in this proceeding was well on its way, Famous Players-Lasky Corporation, thinking that the exhibitors were perhaps then ready for a purely selective method, endeavored to get wholly away from any offering of pictures in blocks and offered its product a picture at a time as released. Again the exhibitors would not have it. The task of selling pictures singly necessitated more salesmen and more frequent visits to exhibitors. Where a salesman formerly sold an exhibitor a large block of pictures for three months at a time, the new plan required a call for each picture or each two or three pictures. Adequately to cover the territory the salesforce had to be multiplied by four. Sales costs were multiplied by two. Work in the contract departments of the exchanges

was doubled and the paper work in every department greatly increased. Had the plan been continued it was estimated that prices would have had to be increased at least 40% in order to avoid actual loss. Exhibitors complained bitterly of their inability to be assured of a quantity of Paramount pictures for their future needs and objected strenuously to being required to bid competitively for each individual picture. So bitter were they that large numbers of Famous Players-Lasky Corporation's best customers purchased the product of competing companies in block and left no time on their programs for Paramount pictures. The strictly unit policy of selling, therefore, had to be abandoned.

The fact that the practice of block booking was general in the industry was considered by some twenty distributors to speak favorably for its fairness. Also several exhibitors testified that in their opinion the practice of block booking was beneficial to exhibitors as well as to producers and distributors. They admitted the truth of the distributors' contention that individual selling would so increase the cost of distribution that the cost of pictures would be too great to be borne by many of the very small exhibitors.

In its main brief in the action before the Federal Trade Commission, the Famous Players-Lasky Corporation maintained:

Theaters cannot exist and prosper on a succession of superspecial pictures, each widely exploited and each advertised as the greatest picture made. The rentals which distributors of such pictures are forced to ask require exhibitors to operate their theaters at capacity and at prices too great to be consistently maintained. The backbone of the exhibition business is the ordinary program picture, few of superspecial quality, none bad but all of a consistently good average quality. Such pictures cannot profitably be sold or purchased on a strictly individual basis. The producer must be assured in advance of a considerable and continuing income in order to maintain consistent quality production. The most businesslike method of securing this assurance is to offer the program pictures in blocks sufficient in number to distribute widely the risk of occasional failures. From the standpoint of the exhibitor the assurance of a definite supply of pictures, upon whose quality he has learned from experience to rely, is worth the deprivation of the opportunity of always being able to buy the proven, outstanding picture of the week.



The contention that block booking is wholesaling as applied to the sale of motion pictures is probably sound. On the assumption that the discount offered because of block purchasing bears a definite relation to the saving in the costs resulting from such block purchases, the practice is quite similar to that followed in many other lines of business. That such savings do appear seems clearly established. The practice of offering a lower price for quantity buying cannot be entirely divorced from the question of who bears the risk of the industry. The exhibitor buys a given block of pictures, pays a lower price for them, and assumes the risk as to the box office value of the pictures. Undoubtedly this makes it possible for a distributor to include in a block poor pictures along with the good ones. That this makes it possible for him to secure a larger income from those poorer pictures than he would otherwise be able to obtain is probably true. On the other hand, if the distributor sells a block of pictures under a brand name, good practice might dictate that the pictures in that group should be of as uniform a quality as possible. Unevenness in quality lowers their standing in the exhibitor market and is likely to make the brand name meaningless. Here again the situation is not entirely different from that in other industries. Not infrequently a manufacturer or a wholesaler may sell a case of assorted merchandise in which the quality is not uniform. He may frequently include in the case merchandise of distinctly lower character as a means of clearing his inventories of such merchandise. In both cases the price is lower than otherwise would be the consequence. That motion picture distributors, unable to make every picture of consistent quality, should follow the same practice is not surprising nor is it in itself to be condemned.

It has been urged that the wholesaling argument does not apply here because, although the product may be of uniform quality, the individual items are not identical. To this assertion it may be replied that such a practice is not without



its counterpart in other businesses. Thus magazines are sold in so-called "combination offers" in which not only do the publications themselves differ but the individual issues of any one magazine differ from each other.<sup>7</sup> Similarly, dry goods are sold in mixed cases, and women's dresses in mixed lots. Whether or not the method is sound, it is true that the motion picture industry does not appear to be distinctive in this regard.

The Federal Trade Commission in its action against the Famous Players-Lasky Corporation attacked the whole fundamental structure on which the practice of block booking was founded. It laid emphasis throughout its case on what it claimed was an essential part of the practice of block booking, namely the practice of requiring an exhibitor to purchase either the entire block of pictures as offered or none.

The Commission presented several different arguments against block booking: (1) it maintained that the practice limited the exhibitors' choice of pictures; (2) it offered evidence to prove that block booking was the direct cause of much overbuying on the part of exhibitors; (3) it argued that block booking unduly preempted the playing time of exhibitors, thus limiting the market for competitors' pictures and tending to eliminate competition; (4) it argued that block booking, by combining in the same group pictures of poor quality with those of better quality, forced upon the market many pictures of poor quality which otherwise would not have had a market; and (5) it further maintained that the protected market offered by block booking resulted in the production of too many pictures.

To establish what it denominated the "all or none" feature of the practice of block booking, the Commission called as witnesses 16 exhibitors who testified that they had been forced by the company's salesmen to buy all the pictures of-

<sup>7</sup> Incidentally, it may be noted that this is also a case of blind buying.

ferred in a block or to buy none. In its brief the Federal Trade Commission made the following statements:<sup>8</sup>

Numerous witnesses testified that they were compelled to buy all of Paramount pictures or none and that they were not permitted to select those pictures which they desired to buy and which they considered most suitable for their communities and clientele.

. . . . The respondents' exchange managers and salesmen who testified in this case, without exception, admitted that when they start out to sell a block of pictures they have a sales-sheet naming each picture that has been released and is ready for the market, and placed opposite each picture is the price demanded, and they try to sell the entire block to each exhibitor but they say that if the exhibitor does not desire the entire block they permit him to pick out the pictures he wants, and say that when he makes such selection they raise the prices of the pictures he selects from the prices set opposite the pictures on the sales-sheet about 50%, so that if the exhibitor selects two-thirds of the pictures offered they will cost him the same as the entire block. This restrictive condition imposed upon those exhibitors who seek to buy less than all, as testified to by the respondents' own exchange men who absolutely superintend the sale of Famous Players-Lasky Corporation's entire production, together with the positive testimony of the many witnesses for the Commission that they had always been compelled to take the entire product in order to get any part of it, conclusively disproves all of the percentage figures contained in these exhibits that respondents have had their economists preparing for the last two years.

Such restraints imposed upon the exhibitor by the salesmen are for the purpose of compelling him, and do in effect compel him, to buy their entire product in order to get any part of it. These unreasonable restrictions and restraints upon the exhibitors are of the same nature and character and have the same effect as the "tying restrictions" and "restrictive clauses" condemned by Justice Day in *U. S. Shoe Machinery Co. v. U. S.* (258 U. S. 451). Under section XX we have shown that block booking is not only an unfair method of competition against other producers and distributors but is an outrage on the exhibitors, as well as on the public who patronize the picture shows.

In reply the company stated in its brief: <sup>9</sup>

<sup>8</sup> Brief for the Commission, Part II, pp. 271-274.

<sup>9</sup> Brief on behalf of the Famous Players-Lasky Corporation in answer to supplemental brief for the Federal Trade Commission—Docket 835.

If the theory of Commission's counsel were correct that the alleged compulsion exercised by Famous Players-Lasky Corporation consists in disposing of its *entire* block of pictures, and nothing less, to one of two competitors to the exclusion of the other, a statistical examination of its contracts with exhibitors should show no sales at all to many exhibitors and large numbers of sales of all the pictures offered in its various blocks. . . . Instead of the suggested showing they demonstrate clearly that the vast majority of the sales of Paramount pictures have been for relatively small portions of the whole number of pictures offered in the various blocks. They demonstrate clearly that the practice has been for exhibitors to select their favorite subjects and to refuse to buy the pictures which they do not desire.

Commission's counsel, however, rely upon the testimony of some 16 exhibitors who testified in some form or other that they had been forced to take all or none of certain blocks of Paramount pictures in order to get any of the pictures in the block.

In direct answer to this evidence respondent produced the contracts which these very exhibitors had made covering the blocks of pictures with respect to which they had testified. These contracts showed that these 16 exhibitors had actually entered into 322 separate contracts for Paramount pictures in Groups IV, V, and VI, each contract resulting from a separate negotiation. These groups are all the pictures for the respective seasons 1920-1921, 1921-1922, and 1922-1923, and the groups were in turn divided into varying numbers of blocks. *Of these 322 separate contracts, only 31 were for all of the pictures in any block, while 98 contracts were for but a single picture each.* Can there possibly be any more convincing evidence that respondent has not practiced the sales policy of "all or none", than the fact that the Commission's own witnesses who testified that they were compelled to buy "all or none" *entered into less than 10% of all their contracts with respondent for all the pictures in any one block, while 90% of their contracts were for less than all the pictures in the block? . . . .*

Aside from the fact that their evidence seems entirely unworthy of belief, there is another reason why the Commission should not accept it as proof that Famous Players-Lasky Corporation has followed the policy of selling its pictures on the basis of all or none. The undisputed evidence in this proceeding shows that during each of the three theatrical seasons mentioned respondent had at least 12,000 theatrical customers. Of these customers, Commission's counsel produced only 16, who testified that the Company had sold or attempted to sell its pictures to them on the basis of all or none. The testimony of these 16 witnesses is not enough to establish proof of the use of

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an unfair method of competition, assuming it to be true and assuming further that such a policy is unfair.

. . . . .

An analysis [Exhibit 27] was made of all the exhibitor accounts which purchased Paramount pictures from Groups IV, V, and VI,

## EXHIBIT 27

ACCOUNTS WHICH CONTRACTED FOR VARIOUS PERCENTAGES OF PICTURES OFFERED THEM FROM GROUPS IV, V, AND VI, IRRESPECTIVE OF THE NUMBER OF CONTRACTS COVERING THE SAME \*

Nontheatrical Accounts and Those in which Famous Players-Lasky Corporation Controls are Not Considered

Note: This analysis includes all contracts taken on Groups IV, V, and VI up to March, 1924, on Atlanta and to June, 1924, on the other Exchanges

EXCHANGE TERRITORY	ACCOUNTS TAKEN FROM GROUP IV											
	100%		Over 90%		Over 75%		Over 50%		Over 25%		Less than 25%	
	Of the Pictures of the Groups											
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Atlanta . . . . .	20	4.6	51	11.8	65	15.0	118	27.2	227	52.4	206	47.6
Charlotte . . . . .	10	3.1	54	16.6	68	20.9	109	33.5	172	52.9	153	47.1
Dallas . . . . .	41	7.3	104	18.5	146	26.0	230	40.9	352	62.6	210	37.4
Oklahoma City . . . . .	19	5.7	55	16.4	82	24.4	118	35.1	207	61.6	129	38.4
Boston . . . . .	21	3.8	85	15.6	121	20.4	207	38.0	314	57.6	231	42.4
New York . . . . .	31	4.6	101	15.1	143	21.4	274	41.0	444	66.5	224	33.5
Cleveland . . . . .	4	1.4	39	13.4	51	17.5	91	31.2	156	54.4	136	46.6
St. Louis . . . . .	24	6.8	56	15.9	77	21.9	121	34.4	217	61.6	135	38.4
Los Angeles . . . . .	8	2.2	62	16.8	89	24.2	133	36.1	199	54.1	169	45.9
Total . . . . .	178	4.6	607	15.6	842	21.7	1,401	36.1	2,288	59.0	1,593	41.0
	Group V											
Atlanta . . . . .	37	9.9	103	27.3	119	31.0	136	35.0	193	50.1	187	49.9
Charlotte . . . . .	7	2.4	51	16.6	68	22.1	98	31.9	129	42.0	178	58.0
Dallas . . . . .	26	5.3	114	24.0	179	37.7	228	48.0	296	62.4	179	37.6
Oklahoma City . . . . .	2	0.7	50	17.4	81	28.2	108	37.6	184	64.1	103	35.9
Boston . . . . .	8	1.4	76	13.3	118	20.6	203	35.4	347	61.6	226	39.4
New York . . . . .	9	1.4	91	13.7	134	20.2	265	39.9	462	69.5	203	30.5
Cleveland . . . . .	5	1.6	33	10.6	66	21.2	113	36.3	175	56.3	136	43.7
St. Louis . . . . .	4	0.9	39	9.3	93	22.0	172	40.8	297	70.4	125	29.6
Los Angeles . . . . .	1	0.0	36	9.4	84	21.9	129	33.7	221	57.7	162	42.3
Total . . . . .	99	2.6	593	15.6	942	24.8	1,452	38.2	2,304	60.6	1,499	39.4



Group VI												
Atlanta.....	20	7.7	76	29.2	79	30.3	141	54.2	170	65.4	90	34.6
Charlotte.....	15	7.4	91	45.1	102	50.6	133	65.9	154	77.0	48	23.0
Dallas.....	60	22.1	120	44.1	129	47.4	173	63.6	211	77.6	61	22.4
Oklahoma City..	34	19.3	83	47.2	93	52.8	128	72.6	165	93.7	11	6.3
Boston.....	6	1.1	174	33.1	217	41.2	301	57.2	411	78.1	116	21.9
New York.....	23	3.6	168	26.8	226	36.1	365	58.3	505	80.7	121	19.3
Cleveland.....	29	9.8	99	33.4	115	37.6	173	58.5	216	72.9	80	27.1
St. Louis.....	25	8.1	133	43.2	155	50.3	195	63.4	239	77.6	69	22.4
Los Angeles....	11	3.1	140	40.2	153	43.9	196	56.2	243	69.6	106	30.4
Total.....	223	7.4	1,084	35.9	1,269	42.1	1,805	59.8	2,314	76.7	702	23.3
Total 3 Groups.	500	4.7	2,284	21.3	3,053	28.5	4,658	43.5	6,906	64.5	3,794	35.5

Total instances where an account contracted for pictures on Groups IV, V, and VI—10,700.

\* Respondent's brief, Vol. I, in case of *Federal Trade Commission v. Famous Players-Lasky Corporation*, et al., p. 522.

to ascertain what proportion of the total Paramount product for each year was purchased by these exhibitors.

This study, of course, deals only with exhibitors who bought *some* Paramount pictures, and takes no account of the *thousands* of exhibitors who *never bought any*. The study embraced nine territories as follows: Atlanta, Charlotte, Dallas, Oklahoma City, Boston, New York, Cleveland, St. Louis, and Los Angeles. These territories represent approximately 40% of the whole country.

In the territories mentioned there were a total of 3,881 accounts who took some Paramount pictures from Group IV. 21.7% of these accounts took over 75% of the pictures, while 41% took less than 25% of the pictures. Furthermore, nearly every exhibitor contained in the 21.7% of the accounts who took over 75% of the pictures did so by several contracts negotiated at separate times and each comprising fewer pictures. . . .

There were 3,903 exhibitors in the 9 territories who bought some Paramount pictures from Group V. 24.8% of them, most of them by many contracts each involving fewer pictures, ultimately took over 75% of the pictures in the group, *while 34.4% took in the aggregate less than 25% of the pictures*.

There were 3,016 exhibitors in the 9 territories who bought some Paramount pictures from Group VI. 42.1% of them took over 75% of the group, *while 23.3% took less than 25%*.

The great success in selling Group VI was not due to any "all or none" policy but to the fact that the pictures of that group were of a higher average quality and therefore more popular with the exhibitors than the pictures in Groups IV and V. Exhibitors also testified



that the pictures in the first block were of a higher quality than those in the second block, and the studies show that in each of the territories under consideration the number of pictures sold in block 1 greatly exceeded the number of sales from block 2.

Totaling the figures obtained from the foregoing studies of three selling seasons, out of a total of 10,700 annual accounts there were 3,053 which, each with numerous separately negotiated purchases for few pictures, ultimately took in the aggregate more than 75% of the pictures for one year while there were 3,794 which took less than 25% of the year's pictures.

Of the 3,053 accounts which ultimately took in the aggregate more than 75% of all the pictures offered for any one year, only 500 or 4.7% took all the pictures offered for any one year.

The 10,700 annual accounts signed a total of 47,288 separately negotiated contracts. Of this total only 1,741 or 3.7% were for all of the pictures offered to the exhibitors at the time the particular contract was executed.

Commission's counsel assert that respondent deprives its customers of "freedom of choice" by automatically increasing its price 50% or 75% when less than all the pictures offered are desired. . . .

. . . .

The first witness definitely limited this estimate to a situation where one picture alone was selected out of a group of many, and in response to a question from Commission's counsel stated that where an exhibitor purchased half the block the price increase per picture would be only from 20% to 25%.

All the witnesses who testified on this subject were careful to point out that the price increase was based upon their estimate of the increased selling cost involved in selling a block of pictures piecemeal rather than wholesale. They pointed out that for an exhibitor to select only a few out of a block of pictures made it necessary to canvass that exhibitor repeatedly until the other pictures had been sold to him or it had been demonstrated that it was useless further to solicit him. All the witnesses mentioned the many elements which resulted in greatly increased selling cost and all stated that it was upon this increased selling cost that the increased retail price was based.

The General Sales Manager of the Company testified that to his positive knowledge the price increase asked in situations where only a few pictures were selected by exhibitors did not average 25%. . . .

. . . .

While Commission's counsel offered no evidence to sustain the oft-repeated charges in Commission's Supplemental Brief that the

block booking policy results in using up all of the available exhibition time of competitors, respondent's counsel offered in evidence carefully prepared statistical summaries showing the situation in all theaters (based upon a geographical selection of about 40% of the total number) and, upon subpoena from the Commission, the situation in first-run theaters in 27 key cities specified by Commission's counsel. This latter information was embodied in respondent's Exhibit 79, with the following result:

One hundred and twelve first-run theaters, out of a total number of 195 such theaters in the 27 key cities mentioned, played some Paramount pictures out of Group IV. Of them only 5 played more than 90% of any block, only 10 played more than 75% of any block, only 20 played more than 50% of any block and only 57 played more than 25% of any block, while 55 played less than 25% of each block. Eighty-three first-run theaters played no Paramount pictures.

One hundred and twenty-eight first-run theaters in the 27 key cities mentioned played some Paramount pictures out of Group V. Of them only 2 played more than 90% of any block, only 4 played more than 75% of any block, only 16 played more than 50% of any block, and only 43 played more than 25% of any block, while 85 played less than 25% of each block; 67 first-run theaters played no Paramount pictures. One hundred and eight first-run theaters in the 27 key cities played some Paramount pictures out of Group VI. Of them only 4 played more than 90% of any block, only 6 played more than 75% of any block, only 17 played more than 50% of any block and only 37 played more than 25% of any block, while 71 played less than 25% of each block. Eighty-seven first-run theaters played no Paramount pictures.

### The Federal Trade Commission replied:

Respondents have placed voluminous exhibits in the record purporting to have been compiled from their sales records in various exchange centers, showing the number of sales made out of the total number of pictures offered from time to time, which they claim refute the charge of block booking. There are so many elements that enter into these sales to theaters outside the key cities that the exhibits are of no value. The proof is that in many of the exchange territories there are from 60% to 70% of all the towns where there is no competition and these towns are referred to in the evidence as "closed towns" or "one-man towns". These closed towns are largely confined to the small towns of 10,000 and under where one man owns all the theaters, and includes that great number of small towns where there is only one theater. Of course, where there is no competition block booking can-

not be forced profitably because the exhibitor controls the market and, monopolistic-like, selects the pictures and names the price he will pay and the producer accepts it or his pictures are not shown in the town. Many of these small-town theaters run only one or two days a week, using but a few pictures, and those are more likely to be the western "shoot-'em-up" kind than the high-grade society and costume feature pictures produced by the respondents. There is nothing on the face of the exhibits to show which towns are closed, which ones are open, the number of pictures used, the character of pictures demanded, or the price paid.

In making up these elaborate percentage tables contained in these voluminous exhibits each one of these little theaters offsets the large theaters in the larger cities where block booking is enforced. There are many elements that might be mentioned which destroy the value of these percentage tables and make them positively misleading.

In commenting on the Brookhart bill, at a hearing before the Interstate Commerce Committee, United States Senate, February 27, 1928, Senator Brookhart said:

The bill steers a straight course between block booking, on the one hand, and the right voluntarily to buy in quantities and obtain advantage of a fair quantity discount. This course seemed desirable from all standpoints. Obviously, however, no such plan will work unless provision is made for some method by which to establish fair differentials between groups of pictures and single pictures or small quantities of pictures. The bill says that the Federal Trade Commission may, after full hearing, fix such fair differentials.

. . . .

We have no objection to their selling in blocks, but the objection that this bill reaches is the proposition that when they are offered for sale in blocks you also say to the buyer, "You take this whole block or you get nothing."

Senator Brookhart referred to the action before the Federal Trade Commission in the following words:

The Federal Commission, after several years of litigation, has issued an order against the Famous Players-Lasky Corporation, the largest of the producer-distributors, to require it to cease and desist from block booking. To sustain this order will require additional years of litigation in the courts. Moreover, it applies to only one producer-distributor, and proceedings would have to be had against at least six others to accomplish reform on this one point.

A series of hearings was held on the bill presented by Senator Brookhart, but Congress adjourned without taking any action.

The Brookhart bill was designed to prohibit blind booking as well as block booking. It should be noted, however, that blind booking was not inherently a part of block booking.

At the hearing on the Brookhart bill before the Committee on Interstate Commerce of the United States Senate, block booking was attacked by Senator Brookhart and several exhibitors, who declared that it denied the exhibitors freedom of choice in the selection of pictures to be shown upon their screens. Senator Brookhart, at this hearing, said:

The exhibitor is required to take the pictures of any given producer in blocks or groups ranging from a dozen to 60 pictures. That is to say, the producers release their films in blocks or groups and the exhibitor must take all the pictures included in such block, the good with the bad, the suitable with the unsuitable, or have none.

In other words, the exhibitor, in order to get the films of a certain producer which are suited to the tastes of his patrons and which he knows they will want to see, must take many other films not so suited which may prove even offensive to his patrons. While this rule is enforced as to independents, it is not so enforced as to the producer-controlled theaters.

You will see at once what a powerful weapon this method of marketing films is in the hands of the great producer-distributors in their competition with the independent exhibitors. The producers allocate to their theaters only the choice films which have been previewed. The independent exhibitor on the other hand must take whatever is offered him by his competitor who controls the product and must take it blindly. It is no answer to say that if a particular buyer does not like the block offered by one producer he can take the block of another. The result to him is the same in both cases; he must buy something he does not want in order to get something he does want.

The exhibitors <sup>10</sup> said in part:

How many small merchants in a position relative to our position could junk 10% of the merchandise that they buy and not use it, not

<sup>10</sup> Sydney E. Samuelson, Newton, New Jersey; Leo Brecher, New York City; Fred J. Harrington, Pittsburgh, Pennsylvania; Henry Staab, Milwaukee, Wisconsin.



sell it; pay for it and not sell it; because they make a mistake, or because they were compelled to buy it? . . . There are probably more than 10% of the pictures on blocks that are not suitable for the particular theater that gets them, that is forced to pay for them, to take them or get no films.

. . . . .

Our small theater in our small town has an insufficient margin of profit to pay for films bought, not to use, but in order to put in another picture. In other words, we cannot buy pictures and pay for them under the contract and then not use them in order to make room for another picture. When my playing time is filled up with pictures I am compelled to take, in blocks, I am unable to buy of other producers. If there were no blocks, I would be able to select the best pictures from time to time.

. . . . .

After all, he (the exhibitor) has to answer for an undesirable product that he shows. At present he still has to answer, although in many cases it is not his choice, it is not his fault, if a picture is not desirable. He has to buy it long before it is made, and when it does come along he has only one choice. If he does not like the picture he can pay for it and leave it there. Now, he cannot pay for an unlimited number of pictures through the year, but if there are too many of them he can be put out of business by that very thing. A man cannot buy unsalable merchandise without limit.

. . . . .

If you abolish block booking and blind buying you have placed the responsibility for pictures exhibited where it belongs—on the theater. The theater will have no more argument saying that it is compelled to play certain pictures. The responsibility is where it belongs—on the retailer.

And then if the theater owner who is incompetent or incapable avails himself, if he so desires, of buying blind or buying in blocks, that is a matter for his individual business judgment, and the consequence be upon his own head.

A New Jersey exhibitor<sup>11</sup> declared that block booking denied to the people in certain communities some of the better pictures each year. The exhibitors in these communities,

<sup>11</sup> Sydney E. Samuelson, testifying before the Committee on Interstate Commerce of the United States Senate at the hearing of the Brookhart bill. See p. 50 of the report of that hearing.



being forced to choose their pictures in blocks, frequently were unable to show some of the outstanding pictures of the year contained in the blocks sold by producers from whom they did not buy. This exhibitor said:

Block booking denies to the public in certain localities certain pictures. Now, taking my own case as a specific instance, in Newton I can use only 234 pictures a year. The estimates vary, and I do not know the exact number, but there are some 600 to 700 that are released. If I should buy under this block booking system the numbers that are forced on me by each of the various distributor-producers, and if I should buy the leading films, or the films that are considered to be leading, I would buy Famous Players, 70; Metro, 50; First National, 50; a total of 220;<sup>12</sup> and the balance of the 400 pictures, good, bad, or indifferent, could not be bought or shown in that theater. That is what the block booking does. Locked out by reason of the block booking condition are the pictures of Pathé, Warner, Universal, United Artists, F.B.O., Columbia, Tiffany, Commonwealth, and others.

Several exhibitors testifying before the Federal Trade Commission declared that block booking forced many exhibitors to buy more pictures than they could use. They testified that distributors frequently forced exhibitors to take complete blocks, even though they knew that the exhibitors did not have sufficient playing time open during the year to show them. These statements were corroborated by exhibitors testifying at the hearing on the Brookhart bill. An exhibitor in Pennsylvania made the following statement about conditions in that state:<sup>13</sup>

The condition confronting the independent theater owners of western Pennsylvania is more precarious, I believe, than in any other district of the United States on account of the coal strike taking part in that territory. We find theaters that have been bound through this order of block booking to overload themselves.

As an illustration of this, I cite the town of Bentleyville, Pennsylvania. One man there bought out the other theater. There are three

<sup>12</sup> This obviously is a misprint in the report. He probably meant to include also 50 pictures from the Fox Film Corporation.

<sup>13</sup> Testimony of Fred J. Harrington at hearing of the Brookhart bill.

in the town, two of which he owned prior to the strike and one that he bought out just at the time the strike was declared. Within six weeks of the declaration of the strike two of the theaters were closed down indefinitely. The other theater he had left open only one night a week. He had approximately 374 pictures booked for the three theaters. The reason for that was that he had been forced to buy in block. He could not buy the pictures as he used them. The ruling was, per the contract, that he had to play all those pictures from the companies or the clause in the contract would be used against him, denying him the right of any pictures from any producer connected with the organization.<sup>14</sup>

Leo Brecher, who operated three theaters in metropolitan New York and represented the Theater Owners' Chamber of Commerce, testified before the Interstate Commerce Committee of the Senate as follows:

As a result of this producer-distributor forcing an exhibitor to accept all his pictures in order to get any of them at all, other producers are shut out of that particular theater. If Famous Players made 80 pictures during a given year and they would come into a town and force the exhibitor to buy all of their 80 pictures, then all the other producers were automatically kept out of that town . . . by the fact that all their booking time was filled up.

. . . .

There are a number of independent producers and distributors, but their development has been checked and their number has decreased, as the Senator pointed out, from some 34 to about 12 or 13 by reason of this block booking method.

There are only so many weeks in the year; there are only so many dates on which pictures can be played; and if a producer forces his product, either through withholding desirable pictures until the exhibitor buys all of them, or through the threat of building a theater and putting him out of business in that way; if this exhibitor has his time filled up with the product of one or two or three of these producers he has no time to go to this independent producer.

The Federal Trade Commission quoted the following testimony of Mary Pickford, who released her pictures individually through the United Artists Corporation:

<sup>14</sup> Motion Picture Producers and Distributors of America, Incorporated.

A. In certain places in the United States we have realized great difficulty in selling our pictures.

Q. What difficulty did you have that interfered with the sale of the pictures?

A. Well, the theaters had purchased the year's output, for one reason. They had their 52 pictures, or whatever pictures they needed, that they had bought in the block, and they had no room for our productions. And another was that they would not pay [our prices] and we could not accept the prices they offered us.

Q. Did you find that you experienced any difficulty by reason of certain producers owning theaters?

A. Yes, we did.

Q. What was the condition that you found in that particular?

A. That they didn't bid for our pictures; they had no room for them; that they simply put their own pictures in there.

Q. To what extent did the block booking and the ownership of theaters by producers interfere with the market for your pictures?

A. Well, in certain sections . . . we were forced to go in cheap houses on side streets instead of the picture theaters, thereby losing money.

The Federal Trade Commission stated in Volume II of its main brief:

In order to control a theater it is not necessary for a producer-distributor to own or lease the theater because if all, or substantially all, of the exhibition time of the theater is taken up in showing the product of one producer-distributor the theater is *ipso facto* closed to all other producers. This result is obtained by means of a sales policy known in the industry as block booking. . . .

The producer's market is the theater; the distributor is the middleman. Block booking, as practiced by the respondent, is an unreasonable restraint because it closes the market to all other producers and compels the exhibitor to take the inferior pictures in order to get the good ones. It is an all or none policy because if the exhibitor desires to make a selection the price is made prohibitive.

. . . Manifestly, if an exhibitor, by the block booking system, is forced to take desirable and undesirable pictures to such an extent that all of his playing time is filled, then all competition, as far as that theater is concerned, is eliminated; likewise, if substantially all of his playing time is thus taken up, then competition, as far as his theater is concerned, is substantially lessened. When this occurs in but a single instance the industry is, of course, not affected in the least, but when the system is practiced on a large scale, and great numbers

of exhibitors are thus tied up, the injurious effect will be felt throughout the entire industry. . . .

. . . . The amount of restraint upon other producers varies according to the number of pictures in a block or blocks and the number of pictures used by the exhibitor.

The unfairness of this system of block booking is that it forces upon exhibitors, in greater or less numbers, pictures which they would not purchase under other conditions thereby depriving other producers of business which they would otherwise obtain were the pictures purchased on an open market basis. This is what is known as full-line forcing and is well described by former Commissioner Joseph E. Davies in his treatise on Trust Laws and Unfair Competition, p. 321, section 14:

This consists in a requirement that specified goods be handled on pain of refusal to furnish certain other goods or to give certain discounts or other favorable terms. It is often called full-line forcing, because a manufacturer of a particular brand of goods which is specially desired may insist that all his other goods, for which there is no special preference, shall be taken in lieu of those of rival makers as a condition of obtaining supplies of specially desired goods, thus attempting to force the dealer to handle the "full line" of the manufacturer. Thus, a former Commissioner of Corporations complained that salesmen of the International Harvester Company used to require dealers to order the so-called "new lines" (i.e., tillage implements, wagons, manure spreaders, etc.) as a condition of retaining the agency of some brand of the Company's harvesting machines. Full-line forcing is closely analogous to the requirement of exclusive dealing. The latter forbids buying from competitors; the former requires that goods which might otherwise be bought from competitors be bought from the company which enforces the demand. The exclusive-dealing requirement may cover a single article and have no reference to any other, but the essence of the full-line forcing method is the tying of two or more articles together. This method is available, therefore, only to a seller who can, by control of a product necessary or desirable to dealers in a certain line, induce them to buy from him either products of which he has not exclusive control or products which they may not care to buy at all. This character of contracts, by different methods, accomplishes the same result, to wit, the elimination of the independent dealer from the market and such contracts have been held to be unfair competition and illegal under the Common Law.

The Famous Players-Lasky Corporation in its brief re-



plied to the charge that block booking tended to eliminate competition. It stated: <sup>15</sup>

The real gist of the charge that block booking is an unfair method of competition is that it is a method disadvantageous to respondent's weak competitors. It is true that the use of block booking makes the respondent a more effective competitor. Likewise it is true that exhibitors prefer to buy blocks of pictures backed by an established trade name and manufactured by a company with a reputation for producing a consistently good product. It is also true that, because respondent can offer pictures in blocks, it has a price advantage over its smaller and weaker competitors. Likewise it is true that the smaller competitors of respondent, who cannot produce and offer for sale blocks of pictures, are at a disadvantage in competing with a company of the size of respondent, able to offer to exhibitors, season after season, a considerable number of pictures at one time. But these advantages are merely the legitimate advantages of business efficiency.

Every time respondent sells a block of pictures to one theater it has the necessary result of making it improbable that a competing distributor will sell its pictures for exhibition during the time consumed by the exhibition of respondent's pictures. Likewise such a sale prevents any other theater from exhibiting the pictures which have been sold to such exhibitor. Commission's counsel forget entirely that, by virtue of having sold all its pictures in a block to one theater, respondent has lost as possible customers all other competing theaters of the same class, which automatically become exclusively available to respondent's competitors.

But, let us again repeat, block booking as practiced by Famous Players-Lasky Corporation involves no covenant or understanding at all on the part of exhibitors not to buy pictures produced by competitors of respondent. . . .

Indeed it does not even have that much of an "exclusive" effect. There is not a shred of evidence in the testimony to show that Famous Players-Lasky Corporation has ever sold to the operator of any theater enough pictures to consume his entire available exhibition time for any substantial number of weeks. In 1920 Famous Players-Lasky Corporation manufactured 93 pictures, but since 1921 it has never manufactured more than 75 pictures in one season. The number of motion picture theaters in the United States which do not require for the needs of any one season many more pictures than 75 is few. The vast majority of theaters in operation in the country today require in excess of 156 pictures a year.

<sup>15</sup> Brief on behalf of the Famous Players-Lasky Corporation in answer to supplemental brief for the Federal Trade Commission—Docket 835.



## EXHIBIT 28

EXTENT TO WHICH AVAILABLE EXHIBITION TIME IS CONSUMED BY  
PARAMOUNT PICTURES  
Nontheatrical Accounts Not Counted

EXCHANGE TERRITORY	Percentage of U. S. Film Rentals Usually Expected from this Territory	No. of Theaters	TOTAL NUMBER OF FEATURE EXHIBITIONS IN THIS TERRITORY DURING THEATRICAL SEASON OF			EXHIBITIONS OF PARAMOUNT FEATURES IN THIS TERRITORY FROM RELEASES OF THE THEATRICAL SEASON OF†						EXHIBIT NUMBER
			1920-21	1921-22	1922-23	Group IV 1920-21		Group V 1921-22		Group VI 1922-23		
						No.	%	No.	%	No.	%	
Atlanta.....	2.90*	475	86,570	86,138	83,485	12,615	14.6	12,232	14.2	10,889	13.0	270
Charlotte.....	1.18	410	55,421	58,665	58,239	11,374	20.5	8,363	14.2	9,420	16.2	199
Dallas.....	2.79	795	154,331†	116,056†	82,230†	21,726†	14.0	16,780†	14.4	12,662†	15.4	170-71-72
Oklahoma City.....	1.28	466	92,539	93,862	70,605	13,345	14.4	9,485	10.1	8,722	12.3	179
Boston.....	5.94	828	94,620	95,259	95,817	20,019	21.2	17,628	18.5	22,824	23.8	204
New York.....	9.91	923	209,397	208,357	207,339	27,955	13.4	21,758	10.4	25,818	12.5	296
Cleveland.....	2.90	444	82,568†	92,568†	66,396	8,739	10.6	8,482†	10.3	12,182	18.3	143
St. Louis.....	2.37	632	107,758	106,949	104,520	13,135	12.2	13,260	12.4	13,956	13.4	271
Chicago.....	7.03	676	154,714	153,114	148,746	19,106	12.3	18,044	11.7	23,430	15.7	195
Denver.....	1.57	639	51,529	52,008	53,168	11,669	22.5	11,394	21.9	12,417	23.4	180
San Francisco.....	3.21	571	104,228	91,655	101,430	15,850	15.2	14,984	16.3	17,375	17.1	193
Los Angeles.....	3.65	581	72,835	73,834	74,508	13,724	18.9	11,042	15.0	14,035	18.8	182
Total.....	44.73	7,440	1,266,510	1,218,465	1,146,483	189,257	14.9	163,452	13.4	183,730	16.0	

Brief on Behalf of Respondents, Vol. I, in *Federal Trade Commission v. Famous Players-Lasky Corporation*, et al., p. 523.

\* Present Atlanta territory is 1.80%. Figure shown here is for Atlanta territory when Contract Record Book was used.

† Estimated from days open. Same percentage as Paramount ratio of features to days.

‡ Exhibitions played or contracted for to July, 1924.

To support its statement that it did not unduly preempt the playing time of exhibitors, the Famous Players-Lasky Corporation presented the table shown in Exhibit 28.

Many exhibitors believed that block booking unduly protected unworthy pictures by making it possible for the producer to get revenue from them by selling them in blocks with the pictures of higher quality. Two exhibitors said:

Block booking permits a producer-distributor to sell a picture before it is made (blind buying) and then deliver an inferior or a completely different picture. The proposition sheets submitted to exhibitors this year specifically reserve the right to the producer to change titles, cast, story, and director, and the contract of sale gives the theater owner nothing but so many reels of films.<sup>16</sup>

The contention is that by selling pictures in a block you are enabled to get revenue out of pictures that are not worthy of revenue, and that the loss resulting from that consists first of all in the necessity of the exhibitor who is obliged to take the block, using pictures that are not bringing him any money into the theater; and secondly, it results in the waste of other good pictures that have been made by other producers which do not get a look-in and do not get any revenues at all, because the time is filled up by these unworthy pictures. I do not say that these bad pictures are made deliberately or intentionally. (I think it is absolutely true that every producer makes an honest effort to make every one of his pictures very, very good and a worthy thing to be shown to the public.)<sup>17</sup>

Should producer-distributors be compelled to sell each picture on its merits, waste in production would have to be eliminated, and a theater owner could select those films for his public which his patrons approve and desire. It will be argued, no doubt, that this will result in severe losses on unpopular pictures. True, but no more severe than losses incurred by manufacturers in other lines of business, who produce and attempt to sell unworthy goods. It merely means that eventually those producers who are most capable and best fitted to supply Americans with motion pictures to their liking will survive.<sup>18</sup>

A further contention of those who attacked block booking was that it resulted in the production of too many pictures.

<sup>16</sup> Testimony of Mr. Samuelson at the hearing on the Brookhart bill, February 27, 1928.

<sup>17</sup> Testimony of Mr. Brecher at the hearing on the Brookhart bill, February 27, 1928.

<sup>18</sup> Testimony of Mr. Samuelson.

By offering protection to all the pictures included in a block the practice encouraged producers to make more pictures than the market could profitably assimilate. Since every picture in a block was insured a certain revenue, the number of pictures produced was not subject to the usual limitation of reduced income.

The Federal Trade Commission in its brief made the following interpretation of some of the testimony presented to it:

Under the policy of selling as outlined by Greene<sup>19</sup> above, an exhibitor could not buy a single picture out of a star series, and his refusal to buy a sufficient number of series at the price demanded, to take all his playing time and close his market for all other product, would result in Zukor's company acquiring and operating an opposition theater.

Robert Lieber owned a large theater in Indianapolis seating 2,800 and used 52 pictures a year. He had, theretofore, been able to buy a part of Paramount program, but for the season 1916-17 he was told by the exchange manager that, in order to get any Paramount pictures, he would have to buy all 52 that he used from Zukor's company. Lieber took it up with the New York office and it confirmed the local exchange. . . . This policy was shutting out and destroying the small independent producer of pictures. Lieber, since 1918, has been the president of First National.

The exhibitors wanted to get better pictures than they were able to buy and at a price they could afford to pay. They were compelled to buy all or none. The prices were prohibitive.

. . . .

The Examiner's Findings show the testimony of exhibitors in different parts of the country who were forced by the respondent to take all of a block or blocks or none and their many objections to this practice. In addition to this evidence we desire to call the attention of the Commission also to the resolutions passed by the New York Theater Owners' Chamber of Commerce on August 2, 1923. (Com. Ex. 344, 345; R. P. 6590-94). This is an exhibitor organization with a membership which represents 500 of the leading theaters in metropolitan New York. These resolutions were submitted to the entire membership two weeks prior to this meeting, in order that all might have ample opportunity to consider and discuss them. The

<sup>19</sup> Member of executive committee of defendant.

resolutions severely condemned the practice of block booking and were passed unanimously. This action by such a representative body of exhibitors is indicative of the attitude of the exhibitors throughout the industry. Probably the best-known exhibitor in the United States in recent years is Samuel L. Rothafel, better known to his millions of radio acquaintances as "Roxy". He was for years manager of the Capitol Theater in New York, one of the largest and finest houses in the United States. In his testimony (pp. 721-2) he points out the evils of this system—how it compels the exhibitor to take the bad pictures in order to get the good ones. He is unalterably opposed to the system. His testimony is convincing because in the management of his theater he has been forced, against his will, to take all the pictures of the Goldwyn Pictures Corporation, which owns an interest in the theater, and he therefore speaks from experience. It naturally follows that this practice affects the public because, when the exhibitors are forced to take an inferior product, the theatergoing public is forced to pay its money to see poor pictures.<sup>20</sup>

The major argument against block booking seems to be that it limits the exhibitor's choice of pictures; it makes it impossible for him to select only the pictures which he considers to be good and to reject those which he thinks have little box office value. That such restriction does occur seems apparent. Just how far it is undesirable is somewhat open to question. The cost of producing those inferior pictures which are the inevitable result of any production plan must be borne in some manner and by someone. If such pictures are included in a block and forced upon the exhibitor, the price of the block should be lower in consequence. If not included in the block, they then would not be sold so generally, but the price paid by the exhibitor for his good pictures would have to be high enough to cover the losses on those of less merit. In any event, it is reasonable to assume that competition among the producers is keen enough to force each one to produce the best pictures of which he is capable for the money available. It is unreasonable to believe that a producer deliberately produces poor pictures. It must

<sup>20</sup> Brief for the Commission, Part II, p. 165.

further be remembered that the independent exhibitor has the opportunity to choose between various blocks of pictures.

If an exhibitor is to exercise the privilege of selecting only the good pictures from a distributor's offerings, he should naturally expect to pay a substantially higher price for that privilege. Here, again, there is a parallel in other fields. Retailers selling women's dresses can select the best in quality and the latest in style only by paying the top price for them and by charging proportionately more to the limited clientele that can afford such merchandise. There is a place for such exclusive shops, but most stores cannot operate on that basis.

A serious argument is advanced against block booking to the effect that the practice results in an undue preemption of an exhibitor's available screen time. Undoubtedly, the total number of hours available for exhibition is distinctly limited for any one exhibitor. If one distributor can sell a block of pictures that will occupy one-half of that time, obviously that period cannot be used for the showing of the pictures of any other distributor. However, any retailer has a limit to the total amount of merchandise he can buy, as well as to the number of different brands of any one item that he can carry. Although there is a greater measure of elasticity for him perhaps, yet a real limit exists; the difference between such a merchant and a motion picture exhibitor is, therefore, but one of degree.

The reasoning in the case under consideration would, in any event, be influenced by the company's policy in the matter of requiring an exhibitor to purchase all pictures in a given block as an alternative to obtaining any of them. The evidence seems to indicate that a salesman did exert considerable pressure in an attempt to obtain an order for an entire block of pictures. This was as might be expected. The evidence would also suggest that in the majority of instances a distributor would accept a contract for part of a block rather than lose the order altogether. On the whole, it would appear that the particular practice under consideration has



a parallel in other lines of business and is, in essence, a sound policy for motion picture distributors to follow.

On July 9, 1927, the Federal Trade Commission, having completed the taking of testimony regarding block booking and other practices of the Famous Players-Lasky Corporation alleged to be unfair and in restraint of trade, issued a statement <sup>21</sup> of its findings on the complaint. The following quotation from paragraph 10 of the statement gives the findings regarding block booking:

10. On July 22, 1919, respondents Zukor, Lasky, and Famous Players-Lasky Corporation, had become, long had been, and still were, the dominant power in the moving picture industry. Said corporation . . . produced films sufficient to offer, and lease, to the exhibitors of the country complete programs. Its product comprised certain films of extraordinary merit for which there was growing imperative demand by patrons of moving picture theaters. Its complete program was equal or superior to any complete program being offered by other distributors of films, but its program included films of less merit which were not suitable for exhibition in the best theaters, and for which there was little or no demand among the patrons of such theaters. To meet the demands of his patrons, an exhibitor operating a theater charging higher prices of admission and appealing to patrons of discriminating taste was compelled to exhibit such films of unusual merit and for which there had been so created a great demand, but was subject to adverse criticism by his patrons and to financial loss, when he also exhibited said films of lower qualities. To maintain the standard of his theater and the favor of his patrons, an exhibitor catering to discriminating patrons found it necessary to exhibit the better films of respondent, Famous Players-Lasky Corporation, and also the films of other producer-distributors of films, exercising therein a discriminating freedom of choice.

On July 22, 1919, the board of directors of Famous Players-Lasky Corporation, . . . for the purpose of modifying, perpetuating and making more effectual its said distribution policy as distinguished from the lease of individual pictures, and for the purpose of intimidating and coercing exhibitors to lease and exhibit films produced and distributed by Famous Players-Lasky Corporation, adopted a progressive and increasing policy of building, buying, owning or otherwise controlling theaters, especially first-class, first-run theaters in key

<sup>21</sup> Findings as to the facts and conclusion, Docket 835, before the Federal Trade Commission.

cities to be used to give to the best picture films produced by Famous Players-Lasky Corporation first-run exhibitions under the most favorable conditions, to advertise and exploit said films, create a popular demand for their exhibition by the patrons of the theaters of the better class in territories adjacent to said several key cities, and to make leases for their exhibition indispensable to the successful operation of such class of theaters.

Famous Players-Lasky Corporation adopted the fixed method of leasing, and does lease, its films under a system known in the trade as "block booking". Under such plan films are offered in "blocks" only. The number of films in a block is not uniform. The numbers most frequently offered are sufficient to occupy the available exhibition time of a theater for three months or for one year. Such blocks contain 13 or 26 films, or 52 or 104 films according to whether the theater changes films once or twice a week. The individual films in blocks being offered at any time are not always identical. Films are included in a block offered to an exhibitor which the agent of Famous Players-Lasky Corporation chooses for that purpose, and which he deems to be within the revenues of the exhibitor. A block is so constituted as to contain certain films which the exhibitor feels compelled to lease and exhibit and also other films of lower quality which the exhibitor does not desire to lease and exhibit and which the exhibitor considers to be unacceptable to his patrons.

Respondent Famous Players-Lasky Corporation has maintained and still maintains said unfair distribution policy. It offers to lease, and does lease, blocks of films as such, the exhibitor taking all as offered or none. If an exhibitor declines to take all, the block is successively offered to his competitors until a sale is made. As an alternative, Famous Players-Lasky Corporation sometimes offers to permit an exhibitor, who declines to lease a block, to lease less than the whole block at prices so high as to make it impossible for him successfully to compete with rival theaters, to wit, at prices arbitrarily fixed at from 50% to 75% higher than the estimated prices of such films as parts of the block. The purpose and effect of such an alternative offer is to coerce and intimidate an exhibitor into surrendering his free choice in the leasing of films and into leasing films in blocks as offered, thereby denying to such exhibitor the opportunity or privilege of leasing and exhibiting certain other films of higher qualities and which such exhibitor's patrons demand and which such exhibitor desires to exhibit. Only in case all competitors in any community refuse to lease a block of films does Famous Players-Lasky Corporation lease for use in that community the films contained in such block upon some other basis to be arrived at by negotiations between the sales agent of Famous Players-Lasky Corporation and the exhibitor.

The purpose and necessary effect of such distribution policy is to lessen competition and to tend to create a monopoly in the motion picture industry, tending to exclude from the market and the industry small independent producers and distributors of films and denying to exhibitors freedom of choice in leasing of films.

Because of the dominant position of Famous Players-Lasky Corporation in the motion picture industry, its methods of competition, policy and practice are necessarily followed, adopted and maintained by all competitors of Famous Players-Lasky Corporation that are strong enough to acquire and operate first-class, first-run theaters to exploit their most meritorious pictures and to offer to lease, and lease, films in blocks only and in sufficient numbers to occupy the available exhibition time of exhibitors. Thereby it is made difficult for small and independent producers or distributors of films to enter into or remain in the moving picture industry or market, or to lease individual pictures on merit. It destroys the freedom of exhibitors to choose according to their judgment and taste films for exhibition and to exhibit only films that in their opinion are meritorious and acceptable to their patrons; and the public is deprived of the power to influence exhibitors in the choice of films and of the benefit of continuous exhibition of meritorious and acceptable films only.

. . . . .

By said methods and means so employed, Famous Players-Lasky Corporation has unduly hindered, and is unduly hindering competitors, lessening competition, and restraining trade in the motion picture industry, and has achieved a dominant position in the moving picture industry, with a dangerous tendency toward the creation of a monopoly therein in the several parts of the United States.

In furtherance of its findings, the Federal Trade Commission on July 9, 1927, issued an order to the Famous Players-Lasky Corporation to cease and desist from certain practices.<sup>22</sup> Paragraph 2 of the order which dealt with block booking is quoted below. All commissioners concurred on this paragraph.

2. From leasing or offering to lease for exhibition in a theater or theaters motion picture films in a block or group of two or more films at a designated lump-sum price for the entire block or group only and requiring the exhibitor to lease all such films or be permitted to lease none; and from leasing or offering to lease for exhibi-

<sup>22</sup> Order to cease and desist, Docket 835, Federal Trade Commission.

tion such motion picture films in a block or group of two or more at a designated lump-sum price for the entire block or group and at separate and several prices for separate and several films, or for a number or numbers thereof less than the total number, which total or lump-sum price and separate and several prices shall bear to each other such relation as to operate as an unreasonable restraint upon the freedom of an exhibitor to select and lease for use and exhibition only such film or films of such block or group as he may desire and prefer to procure for exhibition; or shall bear such relation to each other as to tend to require an exhibitor to lease such entire block or group or forego the lease of any portion or portions thereof; or shall bear such relations to each other that the effect of such proposed contract for the lease of such films may be substantially to lessen competition or tend to create a monopoly in any part of the certain line of commerce among the several states, or with foreign nations, involved in said proposed sale, to wit: the business of the production, distribution, and exhibition of motion picture films to the public, or the business of production and distribution, or of production or distribution of moving picture films for public exhibition.

The Federal Trade Commission, being dissatisfied with the reply of the defendant to its desist order, fostered a Trade Practice Conference to seek a solution to the block booking problem, a conference which was held in New York on October 10, 1927. With the specific recommendations of this conference and with the discussions which followed it, we are not now immediately concerned. At the present moment, block booking is still the common practice of the motion picture industry. It is probably true that there is more open selling than there was. Doubtless this is the result of a number of factors among which the threat of governmental action is probably one. However, the fact remains that block booking still exists. At every session of Congress, bills are introduced designed to curb or prevent it; whatever may ultimately prove to be the case, up to now these bills have failed of passage.

It is true, however, that the contract proposed to go into effect, known as the Optional Standard License Agreement of 1933, contains provisions dealing with this problem substantially unlike those to be found in the earlier contracts.



Throughout the 1931-32 and 1932-33 selling seasons, each distributor offered to the exhibitor a contract which in his opinion was as satisfactory as he could devise. There was, therefore, no uniformity of practice. Thus, seven of the leading companies gave the exhibitor no right to exclude any photoplay whatsoever, while two of them gave the exhibitor the right to exclude 10% of the pictures by paying 50% rental, provided that the exhibitor purchased all the pictures offered him. With these particular variances, as they existed, no further discussion is necessary except to direct attention to some of the specific clauses in this contract which bore upon the practice under consideration.

With reference to roadshows the optional contract contains the following provision appended as an *optional* clause:

The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow", at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theaters at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

Section 17 deals with pictures not generally released for distribution in the United States. It provides that "if any of the said motion pictures described in the Schedule shall not be generally released for distribution in the United States during the period beginning.....and ending....., each such motion picture, but not to exceed a total of five thereof, shall be excluded from this license". The exhibitor may, however, at his option and by giving written notice elect to exhibit all such pictures if generally released during the year immediately following the end of said period.

If the rental paid by the exhibitor for each of the pictures contained in the Schedule averages less than \$400, then the



exhibitor has the right to exclude up to 15% of the pictures contracted for. However, he agrees "(1) as to each feature motion picture excluded in the first five per cent of the total number so excluded to pay to the Distributor the rental therefor specified in the Schedule; (2) as to each feature motion picture included in the five per cent of the total number thereafter so excluded to pay to the Distributor one-half of the rental thereof specified in the Schedule; and (3) as to each feature motion picture included in the five per cent of the total lastly so excluded there shall be added to the rental of the motion pictures then remaining to be delivered hereunder an amount at least equal to the aggregate of the rentals of the motion pictures so lastly excluded, apportioned equally to each or to any one or more thereof, selected by the Exhibitor".

In a report of the Federal Trade Commission, made public in December, 1932, it was announced that no further effort would be made to enforce its block booking order against the Paramount Famous Lasky Corporation. During the period of nearly eleven years since the filing of the first complaint against this practice, 17,000 pages of testimony and 15,000 pages of exhibits have been gathered; this is probably the most voluminous record compiled in any litigation involving trade practices. While it is not likely that many of the exhibitors will be satisfied with the present status of the block booking problem, it is altogether probable that, barring legislation which seems unlikely, the attention of the industry will be for some time concentrated on other problems, leaving this particular issue as it is.

## CHAPTER VI

### PRICING

THE problem of pricing motion picture films raises a host of questions. Are the prices of motion picture films governed by the same principles as those which govern prices of other merchandise, or is a motion picture film so completely different from any other merchandise offered as to make it subject to price influences not applicable to any other merchandise or service sold for public consumption? What is the relationship of the cost of production and of selling to the price paid for those films by the exhibitor? Are the usual laws governing the determination of a monopoly price applicable in the case of the motion picture producer-distributor, who has exclusive title to a product which is not and cannot be duplicated by anyone else? Are pictures priced in the same manner as are commodities commonly designated as fashion goods, such as millinery? Is it possible or desirable to pursue a one-price policy with reference to the pricing of a film? Shall pictures be sold to exhibitors on a flat rental basis or shall a percentage scale be applied?

It is not the purpose of this chapter to discuss in detail the theory of prices in relation to the picture business. It is rather the intention to indicate some of the problems involved and to comment briefly upon them, leaving for consideration elsewhere theoretical discussions of the sort suggested in some of the questions just raised.

It may be well, however, at the outset to remind ourselves of some of the characteristics of motion pictures which have a bearing upon the problem of their pricing by distributors to exhibitors.<sup>1</sup>

<sup>1</sup> The pricing questions considered in this section are primarily those related to the rental of feature pictures. "Shorts", although considered under

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1. A picture is sold solely because of its entertainment value and not as a physical product to be resold. Being a service and an intangible places it in a somewhat different class, in some respects, from ordinary physical merchandise.

2. The picture is purchased by an exhibitor for resale as entertainment to a public, whose tastes are very fickle in so far as individual types of pictures are concerned, but which in the aggregate exerts a continuous demand for pictures in general. It is also true that the public seems to demand pictures in cycles,<sup>2</sup> a fact which suggests a marked similarity to the well-known fashion cycle.

3. The film partakes of the character of a monopoly product in that no one producer makes two films identically the same and no producer sells a picture which is identical to that of any other producer. Furthermore, the overwhelming majority of feature pictures are made by a very limited number of producers.

4. The title to the picture remains with the seller. What he sells is a legal right permitting the exhibitor to show a particular film.

In addition to these characteristics of pictures themselves, there are certain special practices in the industry which must be known before the pricing problem can be approached understandingly:

1. The picture is sold to exhibitors wholly by description. Very rarely does the exhibitor see the picture before he buys it, and frequently the description is of the very vaguest possible character.

2. In practice the price paid by an individual exhibitor is the result of a bargaining process. The distributor does not set a specific price on a picture and then sell it to all exhibitors at that price. Usually he does not even sell it to exhibitors of the same type at the same price. There is, it is true, a certain very general but very definite uniformity in the range within which the price varies for any one exhibitor. In fact, if one may speak very broadly, it is probably true that the variation in price settled upon by the various exhibitors is not so widely different as one might at first suppose.

3. The costs which influence the price paid by an exhibitor are ordinary circumstances as essential to the program, are in practice quite likely to be looked upon as valuable in so far as they supplement the feature picture rather than because of any particular drawing power which they have in themselves. (See pp. 331-334.) This fact obviously has great significance in the pricing of such short films. The reader will note, however, that much of the argument relative to feature pictures applies equally well to shorts.

For newsreels, see Chapter IV.

Compare also with Chapter V and Chapter VIII.

<sup>2</sup> See p. 108.

more specifically the costs of the operation of his theater rather than the cost of the production of the film.

With these general characteristics in mind, we may turn more specifically to consideration of the determination of the price paid by an exhibitor in practice. At the outset, one is confronted by the question as to the relationship between the cost of production of a picture and its selling price. In the motion picture business, price factors so operate that there is little relationship between cost and price. If this were to be a discussion of selling price, one might take this opportunity to discuss how far cost operates to control price in any industry. It is commonly asserted, for example, among motion picture people that cost does control price elsewhere but that it does not in their particular business. As a matter of fact, in a very substantial number of cases the relationship between cost and the selling price is somewhat indefinite at best. After all, a price paid for a woman's hat bears slight relationship to the cost of materials and labor going into that particular hat. The price depends upon its popularity when first offered to the public and the stage in the style cycle at which it is being considered. The price of a given book is not determined primarily by the cost of printing it.<sup>3</sup> Nonreproducible goods, such as works of art, are not priced on the basis of the cost of production; neither are antiques.

In the field of physical merchandise it is the common practice, in arriving at a price at which to sell, to begin with the cost of production. Yet, after the cost of selling has been added to the cost of production, the result is very substantially modified by such factors as the customary market price, the intensity and character of competition, the general condition of business, and numerous other factors that will readily suggest themselves. It therefore becomes apparent that the relationship between cost and selling price

<sup>3</sup> These statements concerning such items as books and women's hats hold true, even though it be recognized that there are elements of cost other than those of material and labor (and exclusive of selling costs) such as those accompanying inventory losses caused by style changes.

in many lines is by no means so close and so definite as some motion picture sales managers believe. We are once again impressed with the fact that the motion picture business, with all its peculiarities, is not wholly unlike all other lines of business.

The usual argument runs about as follows. There is a definitely known cost of making a given picture. This cost may vary from a few thousand dollars to over two million, averaging today less than \$300,000 per picture. This money must be expended before any definite idea of its sales value can be obtained, since no man can tell in advance how the public will react to any particular picture. This assumption may help to explain the attitude of many directors toward wasteful expenditure, and again the question may be raised—does it follow that higher cost means higher box office value? The exhibitor, after all, is selling entertainment—an intangible, somewhat vague thing. How will this picture strike the public fancy? In what things will the public be interested when this picture is offered? These questions are constantly besieging every producer. So he always returns to the same assumption with respect to any individual picture: no person can know its entertainment appeal, and hence its sales value, until the public has seen it.

That this problem is more or less peculiar to the motion picture industry, and an essential part of it, is supported even by those outside the business altogether. Max E. Prager in an article entitled, "Some Accounting Problems of the Motion Picture Industry"<sup>4</sup> says: "In the motion picture industry, however, costs have practically no bearing upon the sales or rental value. This is usually fixed at what the traffic will bear, based upon the merit of the preceding productions. Costs, when used at all, are mainly for public consumption and sales argument, and are in most cases pure fabrications."

Certain corollaries seemingly follow from the assumption that a picture's sales value cannot be known. One is that,

<sup>4</sup> *Administration*, July, 1921, p. 71.



when a picture is offered, the distributor should make every effort first of all to secure sufficient revenue to meet the costs of the picture. Having met the costs, he then continues his efforts in order to make as large a profit as possible. In other words, each individual sale is frankly not made on a basis of cost plus. Early sales are made to recoup the costs incurred. Subsequent sales return the profit.

In the case of many very small theaters, the price paid for a film may not exceed \$7.50 or \$10. It is quite probable that this figure does not cover the cost of distribution on that film plus a reasonable contribution toward production costs. However, the acceptance of this price is based on the assumption that it does cover the direct cost of sale and physical distribution with something left over. This excess is considered to be an addition to the net profit in the event that all production costs have been met by rentals obtained from earlier showings. Any rental figure which more than covers the actual selling cost (which is ordinarily shared by other pictures sold at the same time) and actual physical distribution is, therefore, commonly considered worth accepting. This is the position taken by practically everyone in the industry. Relative to it, Montgomery says, in discussing depreciation rates: <sup>5</sup>

Negatives last indefinitely, but their value in use expires with the demand for the positives printed from them. The larger producers plot curves on the drawing power of each picture and so estimate its probable life and earning power. From these data they are prepared to reckon the lessening value of negatives.

In certain circumstances, as, for example, when a producer makes only one picture over a considerable period, which calls for a large expenditure, the speculative nature of the undertaking would warrant the application of all revenues against the cost of the picture until the cost is fully extinguished before any net income is considered to have been realized. The thought has been advanced that if such an enterprise were on a cash, rather than accrual basis, the expenditures of a given period for a new picture might well be applied against the cash receipts of the same period even though the latter were from

<sup>5</sup> *Auditing Theory and Practice* by R. H. Montgomery, pp. 739-740. (The Ronald Press Company, New York, 1927.)

earlier pictures. The argument is similar to that just referred to, namely, that the outcome of the new picture is so uncertain that any other course would result in considerable apparent profits when all the while the profits have been largely disbursed in an allied undertaking (another picture) which may entail a huge loss with nothing against which to offset it when the picture is released. This much may be said: that when an undertaking consists of isolated productions at long intervals, with a large hazardous investment in such productions, ordinary methods of depreciation, or even the accrual basis of accounting, will hardly apply, and the case will have to be dealt with according to its peculiar circumstances.

In attempting to formulate any really satisfactory explanation of the price problem, certain facts need to be borne in mind. In the first place, the contention that the motion picture is a distinctive product, because its value cannot be known before it reaches the public, has less force the nearer a producer comes to mass production; and, conversely, the fewer pictures he makes, the more the argument holds. The United Artists Corporation, for example, makes a few pictures and claims for them a high average value. On the other hand, FBO made pictures frankly on a mass production basis and put them in a low price class. Then too, while it may be true that a producer-distributor may not meet his total costs (when and if known) on any one picture, yet by a process of averaging his costs and revenues over the year, he may very well establish something of a relationship. In the long run, it may be that this is the best he can do. Certainly the same thing is done in other industries. Some motion picture producers claim that they can estimate in advance to within 10% of their gross revenue for the coming year and are quite content.

Furthermore, in his relations with the individual exhibitor, the distributor does not wait until the year's production is complete before he begins to sell. The annual selling season usually starts in the late spring or early summer. Definite contracts are entered into with exhibitors during the summer for the greater part of their next year's requirements, in spite of the fact that the distributors do not know

what value pictures are to have and in spite of the fact that by the time a picture gets to the public, particularly if it is sold on a flat rental basis, its selling price has already been determined. In fact, few of the pictures thus to be shown have been actually made at the time they are thus bought. On some, work has been started. With regard to others, the plot, cast, and director are known. As to others, it is known only that a certain star probably will appear in them, but neither the title nor the plot is determined. Thus, the producer does actually have definite contracts for definite pictures at contracted prices prior to the production of many of those pictures.

This condition in the motion picture industry is not without parallels in other businesses. The publisher of books faces much the same problem; <sup>6</sup> seldom can the demand for a specific book be definitely determined. Some books, it is true, sell because of the author's established reputation; and so, too, some pictures are valuable because of the stars who appear in them. Some publishers are known to offer the public certain types of books, of a particular quality, appealing to a particular class of readers. So, too, in motion pictures. Some companies make high-class feature films; others produce a cheaper grade of program pictures only; and still others specialize in shorts.

Manufacturers of certain kinds of women's wear and of textiles, in which fashion plays a large part, are in a position somewhat analogous to that of the motion picture producer. Two objections may be raised to this parallel: first, that there is no recognized style center for pictures such as there is for women's wear; and secondly, that the sales cannot be made from samples, as is so frequently done, for instance, in some textiles. The first objection is not entirely convincing. The large, de luxe theaters of New York and Los Angeles do establish a "showing" to serve as a guide to the

<sup>6</sup> See *Economic Survey of the Book Industry, 1930-1931* by O. H. Cheney, Chapter III, "The Book, the Buyer, and the Critic." (The National Association of Book Publishers, New York.)

smaller exhibitor. In fact, it has been said, "A picture is of little or no value to the neighborhood house and smaller towns until it has received exploitation and advertising in a show-window theater."<sup>7</sup> This may not be wholly true, but the point is not without significance. Nor is the second objection to the analogy beyond question. Where the plot of the proposed picture is known, and particularly where the cast and director have been selected, the exhibitor can judge within reasonable limits what the completed product will be.

The exhibition value of a picture, furthermore, is partly dependent upon the amount and kind of advertising done by the distributor. Not only this, but, as bearing upon the general principle under consideration, it should be observed that a distributor has the right to select for use as a "road show" any picture which in his judgment has unusual sales merit. This can be done at any time, even though the picture has already been exhibited by some theaters and although the distributor has contracted to deliver that picture for exhibition to others.

The conclusion would seem to be that the general assumption that cost has no relation to the sales value of a motion picture, and that the value to the distributor cannot be known until a picture has been actually completed and shown, is not without limitations. It is likely, moreover, that the speculative element will be reduced as time goes on. More careful analysis of public demand, the acquisition of controlled outlets, more carefully conceived advertising plans, a probable further reduction in the number of small, independent producing companies, and closer and sounder affiliation with the banking interests are among the factors which should contribute to a greater stabilization of this general situation.

The fact remains, however, that prices paid by exhibitors vary widely, and in practically every case they are the result

<sup>7</sup> See pp. 241-242.



of a horse-trade type of bargaining between the exhibitor and the salesman. No fixed price exists, and the actual contract price is always the outcome of negotiations. What the exhibitor has paid in the past for similar pictures, what the salesman thinks he ought (or can be made) to pay, the type of picture under consideration, the number of the particular distributor's pictures the exhibitor is willing to take, the type of theater in which the picture is to be shown, and the amount of competition met with in that area are only some of the factors influencing the final determination of terms.

Since the earliest period of the motion picture industry, many associated with its problems have been of the opinion that a percentage division of box office receipts between the distributor and the exhibitor provides the most equitable rental system available. They believe that the intangible and indefinite value of the product as measured even between two cities or towns within the same vicinity renders any other method of pricing unsatisfactory. Conditions within the industry during its earlier period, however, prevented any organized attempt to introduce such a price policy. In the first place, distribution and exhibition in general were decentralized and incoordinate. Control systems were inadequate. Moreover, because the ethics of many connected with the industry were questionable, each person or company involved was skeptical of the others' integrity. Finally, most exhibitors were of the opinion that they could increase their profits through shrewd buying for flat amounts, and, on the other hand, the distributors followed the same line of reasoning in regard to making sales.

With the development and systematizing of the industry, occasional attempts have been made to introduce various forms of percentage pricing. It has been suggested periodically as a partial solution to the problems of block booking and of poor-quality films, and at all times as the only satisfactory method for the division of risks and profits. The advent of the "super-special" picture, and in particular the so-called "road show", brought about a very limited amount



of percentage pricing. This limited use of percentage pricing disclosed the principle weaknesses in the system: for instance, the difficulty in effecting the proper percentage division of receipts, inadequate exploitation, and the difficulties involved in checking receipts. The barriers established by these weaknesses were considered by many, both distributors and exhibitors, as insuperable.

The advent of sound pictures, however, brought about a complete change of opinion. Sound pictures were of unknown worth at the box office, though it was obvious from the time of their introduction that they possessed great novelty value. The producers and distributors, on the one hand, wished to profit from the increased attendance; since they were unable to measure the potentialities of the sound film, however, they could not determine rental increases fairly and accurately. As an attempt to solve this problem, some distributors decided to experiment with a system of percentage rentals under which the exhibitor would guarantee a given amount, usually less than the flat rental paid for silent pictures, and split all receipts over and above a given amount according to a percentage derived by mutual consent.

Many exhibitors, on the other hand, wishing not to be burdened with higher flat rentals for pictures of unknown drawing power, acceded to the percentage system. Others acceded because distributors refused to lease sound pictures under any other plan; in the case of many exhibitors, especially those equipped for sound reproduction, sound pictures were indispensable. A large number of exhibitors, although accepting percentage pricing, voiced their objections strenuously. They disliked, for example, granting distributors access to their books, for the reason that the distributors could use the information thus derived to the disadvantage of the exhibitors. The latter believed that percentage rentals would limit their profits and, since no provisions were made for the sharing of losses, would be beneficial primarily to the distributor.

Despite this difference of opinion, in general, both exhib-

itors and distributors agreed that the advent of sound, inasmuch as its effect might be revolutionary, offered an opportunity for experimentation with percentage pricing. In addition, the large national producer-distributor-controlled chains provided a means for trying out such an experiment where such a change was practicable and desirable. Therefore, distributors made many sales under percentage agreements for the 1928-1929 season. Included among the exhibitors to whom sales could not be made on a percentage basis were a few who were farseeing enough to anticipate the drawing power of sound films and to negotiate term flat-rental contracts covering periods of from three years to ten years, and those who changed their programs daily. The latter were not desirable percentage accounts because as a rule the rentals involved were extremely low. Few of these exhibitors were equipped for sound reproduction during the early period of the sound film.

In order to meet the conditions existing in each situation and to derive maximum revenue, the several distributors instituted various forms of percentage pricing. The more generally used policies were (1) guaranty and split, (2) straight split, (3) split over the individual theater operating expense, (4) straight split with the exhibitor paying score charges, (5) small guaranty to the distributor and a split over that guaranty plus operating charges and a small profit to the theater operator, (6) the so-called "unit system",<sup>8</sup> and (7) many combinations of any or all of these methods. In almost every instance, arrangements varied and the final terms were reached by bargaining.

<sup>8</sup> The unit system for determining rentals may be described as follows: For example, a week might be divided into ten units weighted: Sunday three, Saturday two, and all other days one. Assuming that an exhibitor received a gross of \$1,000 during the first three days of the week, the arrangement might be as follows: For a Sunday, Monday, and Tuesday booking (five units) the exhibitor paid \$250 for the film. One hundred dollars per unit, or \$500, presumably covered operating charges, leaving a balance of \$250 for profit to that exhibitor. All receipts over \$1,000 could then be divided with the distributor in the latter's favor 60/40 up to total receipts of \$1,500, and 70/30 in the distributor's favor over \$1,500.

No one plan for percentage pricing was used universally; a few, however, found general acceptance. As a rule, except perhaps for selected honest exhibitors and many circuit theaters, distributors favored a guaranty and split. Where a straight split was used, especially among the smaller and "all film" houses, the division often was 40/60 in the exhibitor's favor. The exhibitor was given the larger amount because out of his share he paid score charges, a fee charged for musical synchronism, the cost of newsreels and other short subjects, as well as the cost of local advertising and exploitation. In many de luxe houses offering expensive stage presentations the split applied to the amount taken in over and above the house overhead, which included all operating charges less the cost of both stage and screen entertainment. Other large houses played on a straight split basis; the split might be, for instance, 25/75 in the exhibitor's favor. One circuit contracted for a straight percentage division of 25/75 in its favor up to an amount equivalent to the house expense plus a small profit and an allowance, perhaps 5%, to the distributor. All receipts over that amount were split equally.

Many exhibitors favored a straight percentage plan rather than a guaranty and split. They were of the opinion that under the latter plan the distributor's profit commenced with the first dollar received and that, to be equitable, price policies should be made so that, if distributors shared the extra profit in successful pictures, they should agree to share losses on all box office failures.

The distributors, on the other hand, were opposed to a general adoption of straight percentage pricing. Under such a policy, they believed, rentals were dependent too much upon the initiative of the exhibitor. They contended, moreover, that under a straight percentage policy there would be a tendency for exhibitors to become lax and inefficient and overly imbued with the needs for economy in advertising and exploitation. Another important consideration was the dishonesty of some exhibitors and the distributors' inability

to provide an adequate and economical box office checking system. Such factors as these at times led distributors to demand as a guaranty the full amount of the expected rental. They followed this practice especially for theaters that were too small to warrant expenditures for the services of a box office checker. Thus, although for appearance's sake split figures were established, the distributors usually did not expect these amounts to be reached, at least as reported by the exhibitors.

With the general introduction of percentage price policies, certain difficulties became apparent. Some of them were inherent in the plan; others were the result of faulty administration of the system. The more important inherent difficulties included the allocation of bookings as regards the different days in the week and the application of the percentage system to theaters which booked double feature programs. The principal administrative problems included the difficulties involved in the division of receipts, in checking theater attendance, and in providing adequate exploitation. In addition, it was alleged that small exhibitors were being charged exorbitant rentals. These large rentals were attributed more to the novelty value of sound and the distributors' desire to capitalize on it than to percentage pricing itself. Moreover, producers of sound pictures had invested heavily in studio equipment, the future value of which was open to conjecture. By 1931, although equitable pricing still was involved in every sales agreement, rentals, both guaranties and percentage splits, had been reduced substantially. Many distributors, realizing that their future prosperity would be influenced by the success of independent exhibitors, had adopted a co-operative attitude on all matters pertaining to rentals.

Concerning the inherent difficulties involved in percentage pricing, no adequate method had been found for the allocation of play dates mutually satisfactory to distributors and exhibitors. This problem was present in theaters having more than one program change each week. Such theaters were usually subsequent-run houses. The problem had been



met to a limited extent through the use of guaranties and various modifications of the unit system.

The application of a percentage pricing policy to theaters showing double feature programs constituted one of the most perplexing problems. In some cases the problem could be met by the showing of pictures of one producer on the same program. In a majority of instances one of the two pictures shown was leased for a flat amount, this amount being included as a part of the house expense. Such an arrangement required that the exhibitor book at least one-half of his film requirements on a flat rental basis. In some cases distributors sold to double feature accounts only under flat rental contracts. Occasionally other distributors, principally as a matter of expediency, met the problem by bargaining with the competing distributors and the exhibitor to determine which picture would receive a flat rental and which one a guaranty or percentage division, or both. Rarely did the distributors agree to share unequally; if a division was agreed upon, it was usually made on an equal basis. With but few exceptions, and regardless of the method used, percentage arrangements, because of the many variables involved, had not been satisfactory for accounts which exhibited double feature programs.<sup>9</sup>

By 1931, the chief problems in the administration of a percentage pricing policy, namely the tasks of checking box office receipts and of inducing exhibitors to provide effective advertising and exploitation, had not been solved adequately. The seriousness of the problem of checking receipts at times threatened to disrupt the entire percentage system. Exhibitors resented the use of checkers by distributors. They disliked, for example, the stationing of unfamiliar and unregu-

<sup>9</sup> The Paramount Publix Corporation announced that during 1931 and 1932 percentage sales would be restricted to theaters where a division of receipts would be mutually beneficial to the company and to the exhibitors. Pictures would be sold to theaters showing double feature programs under flat rentals only. This policy was adopted because of the difficulty encountered in showing two pictures from one producer on the same bill. (See *Variety*, April 1, 1931.)



lated individuals either in the box office or at the entrance. According to many exhibitors, the checkers were uncouth and not reliable. Moreover, their very presence, some exhibitors believed, cast aspersion on the integrity of the theater owner or manager.

In many instances checkers were a burden to a theater; on the other hand, some checkers and exhibitors were known to have conspired to embezzle portions of the distributors' share of the receipts. A number of different practices were evolved to carry out such a conspiracy. For instance, checkers would fail to observe a change in the color of tickets. In other cases the conspiracy took the form of a direct theft. Distributors resorted to several different plans for stopping these practices. An effort was made to secure a corps of reliable and diplomatic checkers. This was difficult because as a rule the task of checking was neither continuous nor the type of work to attract reliable and efficient men. Moreover, the cost of recruiting and maintaining a force large enough to handle peakloads was considered by many to be an undesirable fixed burden. In considering this phase of the checking problem it should be borne in mind that the rentals involved in many theaters were not large enough to warrant the expense involved in checking.<sup>10</sup>

Under the proposed Optional Standard License Agreement, 1933, the exhibitor agrees to pay for each feature picture at least three days in advance of the date of delivery. In the case of percentage bookings, this is clearly impossible. The contract, therefore, provides that the rental shall be paid immediately after the last exhibition on the last date of the showing or, "if requested by the distributor, at the end of each day's exhibition". The contract further provides that "in each such case the exhibitor shall deliver to the distributor immediately after the last exhibition on each date of exhibition . . . a correct itemized statement of the gross receipts . . . upon forms furnished by the distributor

<sup>10</sup> Checkers while on the road usually were paid \$5 per day and traveling and room expense.

and . . . signed by the exhibitor . . . and the cashier. . . . Upon the exhibition date or dates of each motion picture an authorized representative of the distributor is hereby given the right to verify the sale of all tickets of admission to said theater and the receipts therefrom; . . . and also the right to examine all relevant entries relating to such gross receipts in all the exhibitor's books and records. . . . The distributor agrees that any information obtained pursuant to the provisions of this clause shall be treated as confidential excepting" in an arbitration proceeding. When pictures are licensed on a percentage basis, failure to show a picture may result in the exhibitor's paying as liquidated damages, in addition to any fixed sums, an amount equal to a percentage of the average daily gross for the preceding 90 days or a sum equal to 65 % of the receipts for the last day of the exhibition. These provisions are, of course, included to insure showing of pictures that have been booked.

The whole question of percentage pricing undoubtedly assumes larger importance at the present moment than it is likely to assume in the years to come. As a matter of fact, it raises some very significant questions. On the whole it is doubtful whether percentage pricing, as supported by a very substantial number of those in the industry, can be justified. There are several reasons for this, a number of which have been touched upon already.

In the first place, percentage pricing undoubtedly does arouse a substantial amount of ill will on the part of exhibitors. After all, the success of a motion picture distributor depends upon the goodwill of his customers. If those customers object to the terms upon which his product is sold, a substantial amount of resentment is built up. Since the exhibitor may not always have the alternative of refusing to buy, this resentment may not always be effective. But, unless the compensating advantages are very pronounced, it cannot be considered sound policy to continue a practice to which a very substantial number of buyers object.

In the second place, percentage pricing is quite imprac-

ticable, generally speaking, where double feature programs are presented. Just what is the future of the double feature policy is something to conjecture. It may be bad policy and yet continue, for a good while to come, in many sections. The fact is, however, that double feature programs are common in many sections of the country and are more common than they were several years ago. It cannot be denied that percentage pricing of pictures on a double feature program raises questions which have not yet been solved.

In appraising the validity of percentage pricing, a comparison with pricing practices in other industries is again helpful. The terms on which merchandise is sold vary widely as do the relations between manufacturer and distributor. The great bulk of merchandise is sold outright on terms which at least parallel the flat rental policy as applied to motion pictures. Other terms do, of course, exist; for example, merchandise may be sold on consignment, in which case the title rests with the manufacturer and in which case also he bears a large part of the burden of the risk in regard to its sale. So far as pricing is concerned the terms quoted by the manufacturer to the distributor are ordinarily those of a flat price, definitely known before the merchandise is even placed in the hands of the distributor; and the latter's gross profit is represented by the difference between this price and the resale price. The bulk of the risk is borne by the manufacturer, and he is not, under the ordinary terms of consignment sale, guaranteed anything in the way of return. In the pricing of motion pictures on the contrary, the producer-distributor does not fix the specific price for his product to be given to the exhibitor; the admission price (comparable to the resale price in other instances) is certainly not under his control; and the producer-distributor is commonly guaranteed some return.

In other cases merchandise may be sold on a commission basis, and it is sometimes held that percentage pricing in motion pictures is comparable to this practice. Again, examination indicates that such is not true. In practically all

such instances the person selling the merchandise is an agent of the manufacturer. No such relationship is intended between the motion picture distributor and the independent exhibitor. Furthermore, with the ordinary commissioned sale, the title remains in the hands of the manufacturer and the sale price is definitely fixed by him. His agent receiving the commission knows definitely what his return per sale is to be, and in many instances the sale price is beyond the resale price.

Where motion pictures are sold on a percentage basis, however, the exhibitor is an independent operator and in no real sense is he the agent of the distributor. The resale price of the merchandise is not a matter over which the distributor can have any real control for obviously the resale price in question is not that of the feature picture but the admission price to the theater, only a part of which is paid to see the feature. Where percentage pricing is practiced, what the distributor is in reality saying to the exhibitor is this: "You buy the picture, guarantee me a return, assume the business risk—but you won't know what the merchandise is going to cost you until I find out how great are the gross box office receipts."

It may be said, however, that the *terms* of sale are known in advance and that, for purposes of theater management control, they are known with sufficient definiteness to be satisfactory. But here another problem arises—that of who should properly assume the business risk.<sup>11</sup> The usual justification for profits as a source of income rests upon the intelligent assumption of business risk. In other words, profits are the reward for the intelligent acceptance of and adjustment to the ordinary risks of business. The independent exhibitor is entitled to a profit on his operations on this same basis and, in so far as he intelligently meets the uncertainties of business, is entitled to a reward therefor. In per-

<sup>11</sup> To the theorist this problem of percentage pricing in its relation to risk bearing and to the justification of profit raises some extremely interesting and significant issues.



centage pricing, however, although the risk is largely passed on to the exhibitor, he is not given altogether the compensatory profits resulting therefrom. What the distributor is asking is not even a percentage of the price received from the sale of the particular piece of merchandise (the feature picture) which he has theoretically delivered, but rather he is asking for a percentage of the total receipts of the exhibitor's business, only a part of which can be ascribed to the picture with which he is directly concerned. If the gross receipts of the business were entirely the result of the sale of the feature picture, there might perhaps be some justification for this procedure. Actually this is by no means true. The gross box office receipts are the result of a great many other factors, among which may be mentioned the accompanying comedies and newsreels, the advertising which the exhibitor does, the efficiency and courtesy of his personnel, the performance of his mechanical equipment, to say nothing of the personality of the exhibitor himself. It is difficult to see, with these facts in mind, how percentage pricing can on theoretical grounds be defended. The fact that the exhibitor may get some part of the added profit which is the reward of his own efficiency does not alter the essential unsoundness of the principle.

Finally, it may be pointed out that there seems to be, at least in some instances, a definite trend away from percentage pricing. Some of the distributors have a definite feeling that, at least so far as the independent exhibitor is concerned, they very seldom get any profits over and above the guaranty of which they are assured in any event. Since in the long run what they actually get therefore is a flat rental, the difficulties of checking combined with the ill will created among exhibitors does not seem to justify a continuance of the practice. On the whole it may be said that, with the bulk of the accounts served by distributors, percentage pricing, however justifiable it may have been when sound was originally introduced, is not to be commended as a permanent policy. Should the practice become relatively unimportant, at least



so far as the independent exhibitors were concerned, the whole experience would ultimately be of interest largely in so far as it illustrated an interesting experiment undertaken in an effort to meet the unusual situation created by the coming of sound. It would depict a situation in which immediate action was demanded, but for which there was no past experience to serve as a guide, and which continued only until such experience had been gained.

## CHAPTER VII

### PROTECTION

FOR years it has been the general practice in the motion picture industry for an exhibitor in buying a picture to secure from the distributor protection against certain other theaters within his competitive zone, in the form of an agreement on the part of the distributor not to permit that picture to be shown by such theaters until a prescribed time has elapsed. The validity of such protection and of the manner in which it shall be provided is an issue which has provoked as much discussion as any other problem in which the distributor and exhibitor have been interested.

The theaters which usually are first in their zones to show new pictures are commonly called "first-run" theaters. Those theaters which customarily are the second in their zones to show pictures are known as "second-run" theaters. In like manner those theaters which show pictures third, fourth, or fifth in their zones are classed as third-, fourth-, or fifth-run theaters. While each theater is generally classified according to the run of pictures which it ordinarily shows, many theaters often do exhibit other runs. As a result, out of this whole situation there has developed a most complicated series of arrangements which continually provide points of irritation for both distributors and exhibitors.

The basic need for protection rests upon the peculiar nature of the product. In the first place, the newer a picture is, ordinarily, the more valuable it is. It is claimed that 40% of the total revenue of all pictures is secured from the first-run showings in 100 key centers, and that about 50% of the total revenue of a picture is obtained within the first 90 days after its release. Promptness in distribution is deemed, therefore, both necessary and of value. The accumulation of reve-

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nue from pictures over a period of 18 months after release, as estimated by one of the larger producers, is shown in the amortization schedule in Exhibit 29.

### EXHIBIT 29

#### SCHEDULE OF AMORTIZATION OF NEGATIVE PRINTS

Month	Percentage	Cumulative Percentage
1	12½	
2	14	26½
3	12	38½
4	9½	48
5	8	56
6	6	62
7	7	69
8	6	75
9	5	80
10	4	84
11	3½	87½
12	2½	90
13	2½	92½
14	2½	95
15	1½	96½
16	1½	98
17	1	99
18	1	100

This situation is not present to such a large extent in most other industries. A desk, for example, may be as valuable for sales purposes today as it was five years ago, because it is sold on the basis of the durability of its construction, and not on the basis of style. The gradual shift from wooden to steel desks is being made simply because of the greater durability of steel, and, since the element of style is not present, once the shift is made there is not likely ever to be a return to wooden desks. A given desk, then, would be as readily accepted by a buyer and would command very nearly as high a price today as it did five years ago. This is not true of a given photoplay, for a number of reasons. One important factor is to be found in the technical advances which are constantly being made, a striking example of which is the development of sound. Another reason is that a producer runs the danger of losing his original idea. This factor is

especially effective, since a producer cannot make pictures in secret and, therefore, is practically forced to place his product on the market as soon as it is completed. The loss of the public's interest in certain types of pictures is another factor to be considered. For these and for other reasons, the first runs generally are worth more to the exhibitor and can be disposed of by the distributor for a higher price than any other subsequent showing.

The real appeal of a picture consists in the fact that it is new; other people are talking about it; fan magazines and newspapers are writing about it. Furthermore, if the distributor does any national advertising on billboards or in such media as the *Saturday Evening Post*, this advertising stresses the new pictures, not old ones. Hence the value of such advertising is greatest immediately following its appearance. This factor of perishableness lies at the root of protection. It may be recalled that with other types of perishable merchandise the physical quality of the product depreciates with the passage of time. With a motion picture this is not true. Projection, screens, and prints are reasonably standardized. To all intents and purposes, therefore, the entertainment is intrinsically the same entertainment, whether seen at a de luxe house or a fifth-run neighborhood theater. It is true that in the de luxe house the pictures are often displayed in more attractive surroundings and may be supplemented by other forms of entertainment such as stage presentations. But, after all, the picture is the drawing card and it is the same in both theaters. Obviously, therefore, some people will hesitate to pay twice the price to see a given picture at one house if they can see it under entirely satisfactory surroundings elsewhere.

Another respect in which motion pictures differ from most other types of merchandise is that there is practically no repeat demand for a picture. A consumer may buy and enjoy a can of corn. A few days later he will buy another can exactly like it. The fact that he bought the first at one store does not prevent him from buying the second in some other

shop. But a cinema patron, having seen a picture once, will rarely go to view it a second time. He may, it is true, cultivate a taste for motion pictures and may prefer a certain star or a certain company's product to some other; no matter how much he may have enjoyed seeing a picture at one theater, however, he seldom will go to another theater for a second viewing of it. Hence a large first-run house wishes to be certain that no other theater in the same competitive area, possibly charging a lower admission price, will run a given picture "day and date" with it.

The first-run exhibitor insists upon still further insurance. Knowing that many patrons do not wish to wait too long before seeing a new and recently discussed picture, even though they are certain that they will be able to see it for less money later, the exhibitor insists that a substantial interval of time elapse between the picture's last showing in his theater and its first showing at some other show house. Furthermore, no theater, having purchased a picture for a second or third run, is allowed to advertise the showing during any prior run in the same zone.

While it is true that in the motion picture industry the use of a protection system is needed largely because of the peculiar character of the product, it is to be noted that even in other fields similar conditions exist. For example, when a manufacturer of style merchandise brings out a style item, he often sells that item to only one department store in a city, having chosen the store on the basis of its volume of purchases and of the type of its clientele. He grants to this store the exclusive right to sell that item for a limited period of time, after which he distributes the product to other customers. Similarly, books are often published first in serial form in magazines. In such cases the book publisher has to wait until the serial is completed before he may bring out the book. Again, under certain conditions, securities are distributed to underwriters with the stipulation that the underwriters shall refrain from selling the securities until after



a specific period of time, such time being set to allow the original owner to market his other holdings.

In the motion picture industry, the practice of granting protection has become very firmly established. The fact that it is so firmly fixed renders it difficult to eradicate it even if that were desirable. There are, in addition to those factors already noted, still other reasons which explain the protection system as it is practiced. In cases where a producer-distributor owns his own theaters, it is perfectly natural that he should protect his own theaters first. Similarly, when he sells to another chain of theaters buying in substantial quantities, he will frequently protect all the theaters in that chain regardless of their type against any independent theater regardless of its type. The reason for this is that the transaction is largely a matter of bargaining; the chain demands protection as a condition of purchase and secures it because to the distributor the total volume of business which the chain offers outweighs in importance any price which the independent exhibitor would pay for any one picture. Another reason for the operation of the protection system is to be found in the increased interest of an exhibitor in promoting public interest in his showing when he knows that the full results of his promotional efforts will redound to his own benefit and not to some one else's advantage.

The determination of a uniform and rigidly standardized protection plan is believed to be physically impossible. The interdependence of price and protection tends to hinder the uniform application of such a system; the exhibitor pays more in order to secure protection, and he gets protection because he has paid more. Other factors to be considered are those which explain the shape and size of the territory naturally contiguous to a given theater, such as the location of railroad tracks and factory sections; the location of streets on which the general direction of traffic moves; parking facilities; transportation facilities, such as street-car service, bus lines, etc.; the seating capacity and location of theaters; and theater admission prices and average prices

for film rentals. The impossibility of standardizing all these elements makes difficult the adoption of a uniform plan of protection. Consideration must be given also to the general character of a theater in respect to its music, presentation of pictures, class of patronage, advertising, the vaudeville and added attractions which it uses, the stability of its policies, the number of changes in its program per week, and, in some cases, its drop in patronage.

During recent years additional factors have entered to complicate still more the problem of protection. The advent of sound created an important problem for a time; its effect was soon minimized, however, by the rapid installation of sound equipment. The overlapping drawing power of certain theaters in a given area assumes greater importance with the increased number of de luxe neighborhood theaters, many of which recently have enhanced their attractiveness by providing parking space for their patrons. The development of good roads and the tendency of people to shop in merchandise establishments in the larger centers affect theater patronage, in spite of the fact that the admission prices in motion picture theaters, unlike retail prices in other lines of business, are higher in the larger centers than in the small towns. Finally, the increasing importance of producer-affiliated theater chains and the development of consolidated, centralized buying of films have exerted a noticeable influence on the protection of all houses, in particular the better theaters.

In reviewing the problem of protection, one should review also the rise of the de luxe theaters, especially the large ones of from 3,000 to 5,000 seating capacity. The drawing power of these theaters, a majority of which are controlled by producers, has increased steadily in scope, partially because of improved highways, but in particular because of the characteristics of the theaters themselves. They are architecturally attractive and are comfortable; their programs frequently include supplementary attractions, such as vaudeville; the pictures which they show are new; their bargaining

power enables them to secure the best films available; and, finally, their advertising ability is superior. Because of the wide range of their drawing power, these theaters crosscut the established lines of protection almost without exception, protection areas being extended in some cases as many as 600 miles. Also, the length of protection periods has been increased to from six to nine months. Such demands are exorbitant and are based, not on any economic need, but on an absurd desire to push the monopolistic advantage gained from bargaining power as far as possible, regardless of need or justification. Such practice actually is harmful in terms of ill will and of threatened legislation. On the other hand, it is believed generally that, except in the Times Square area in New York City, the very large theaters can exist only where adequate protection is assured. While it is difficult to ascertain any definite boundaries to the area from which a theater draws attendance, through a check on the effectiveness of advertising, managers of de luxe theaters can gauge with reasonable accuracy the practical drawing power of their houses. Were it not for this fact, the problem of protection would be even more complex than it is.

The use of a systematic plan of protection, if it were fair, would carry with it a number of benefits. If the assumption be made that any such plan would provide for a shortening of the average protection period, the distributors would benefit from an earlier receipt of their total rentals and, for some theaters, from an enhanced value of their product. Still assuming a shortened protection period, the exhibitors would enjoy increased attendance because of the relative newness of the pictures and because of the additional value of the exploitation and advertising, especially word-of-mouth advertising, carried over from prior runs.

In recent years progress has been made in systematizing protection, and thereby speeding up the entire distribution procedure. Despite this progress, however, much dissatisfaction on the part of both distributors and exhibitors is found with the way in which protection is exercised. Some

critics of the industry charge that protection is used to restrain trade. Undoubtedly, in many instances the desire to limit competition is the compelling motive. The distributors and their affiliated chains are accused individually and collectively of conspiring against the so-called independent exhibitor through unreasonable protection. Certain chain operators are held to have demanded unreasonable grants, both as to the length of time and as to the area in which the protection is applicable. Distributors complain because of retarded bookings and delayed receipt of income. The independent exhibitors in many cases are charged with lack of cooperation and with unreasonableness, in particular with an unwillingness to accept a fairly good plan because it is not perfect.

Perhaps the most significant complaint was that brought by the United States Government <sup>1</sup> in April, 1929, charging the Fox-West Coast Theaters and 9 <sup>2</sup> motion picture distributors with combining to violate the Sherman Anti-Trust Act. The indictment, a criminal charge, held that Harold B. Franklin, president of the West Coast Circuit and the theaters contained therein, and all the distributor defendants were conspiring to deprive unaffiliated exhibitors of their right and opportunity to purchase and show motion pictures in competition with West Coast Theaters. The charge was directed specifically against the defendants' conspiracies against those exhibitors charging admission prices of 10 cents or less and against those granting premiums.

The contentions of the defendants' attorneys were summarized as follows:

The West Coast Circuit was entitled, in its dealings with each individual producer, to obtain the benefit of its large-scale buying power.

<sup>1</sup> Action filed in the District Court of the United States for the Southern District of California, Southern Division.

<sup>2</sup> The 9 distributors were the Fox Film Corporation; Paramount Publix Corporation; Metro-Goldwyn-Mayer Pictures Corporation; United Artists Corporation; Universal Pictures Corporation; First National Pictures, Incorporated; Warner Bros. Pictures, Inc.; Vitagraph, Inc.; Pathé Exchange, Incorporated; and Vitagraph Company of California. (*Motion Picture Herald*, April 27, 1929, p. 25.)



Each producer, so long as it did not act in combination with others, was entitled to choose its own customers for films and deal with them on its own terms.

Since the question whether the alleged restraint was unreasonable must be decided by all the relevant circumstances, the mere fact, if it be a fact, that any clearance schedule which defendants adopted might have operated unfairly in a few individual cases, does not bring them within the Sherman Act.

The indictment did not charge that the public had been harmed by the conduct of the defendants. This is an important circumstance, indicating that the alleged restraint is not unreasonable. An alleged agreement is not illegal merely because it restrains competition. In determining its reasonableness, and consequently its legality, the facts peculiar to the business, the nature and effect of the alleged restraint, the evil it was designed to correct, and the reasons for adopting the particular remedy are all relevant facts.

The Sherman Act does not prohibit all restraints of interstate trade or commerce, but only those which are undue or unreasonable. It does not forbid or restrain the power to advance or further trade or commerce by all normal and usual methods, whether by agreement or otherwise.

The criminal charges were dismissed early in August; in their place a civil action was filed in the form of a bill of equity to restrain the defendants from entering into any conspiracy for the purpose of:

1. Excluding or attempting to exclude unaffiliated exhibitors from exhibiting, in the course of interstate trade and commerce for motion picture films.

2. Excluding or attempting to exclude unaffiliated exhibitors from exhibiting in competition with affiliated exhibitors.

3. Excluding or attempting to exclude, by acting in concert, any exhibitors from exhibiting two or more motion picture feature productions on one program, or from donating gifts or premiums to their patrons in connection with any motion picture performance.

4. Enforcing or attempting to enforce clearance schedules providing for unreasonable and discriminatory protection.



A final decree in Equity, from which the following are excerpts, was delivered late in August, 1930:

2. That the combination and conspiracy to restrain and to monopolize interstate trade and commerce in motion picture films as described in the petition herein is hereby declared illegal and in violation of the Act of Congress of July 2, 1890, entitled, "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", commonly known as the Sherman Anti-Trust Act.

3. That the defendants . . . . are perpetually enjoined . . . . from carrying out, directly or indirectly, by any means whatsoever, the conspiracy described in Paragraph VI of the petition. . . .

4. That the defendants . . . . be enjoined from collusively, collectively or by concert or agreement—

a. Excluding or attempting to exclude unaffiliated exhibitors from contracting in the course of the interstate trade and commerce in motion picture films for films to exhibit first- or second-run or first suburban run in the City of Los Angeles, California, and in other cities and towns in the southern half of the State of California;

b. Excluding or attempting to exclude unaffiliated exhibitors from contracting in the course of the interstate trade and commerce in motion picture films for films to exhibit in competition with exhibitions thereof by Fox-West Coast Theaters; and

c. Excluding or attempting to exclude from the interstate trade and commerce in motion picture films all said unaffiliated exhibitors who—

1. Exhibit two feature motion pictures on one program, and

2. Donate gifts or premiums to patrons;

d. Enforcing or attempting to enforce clearance schedules providing for unreasonable and discriminatory clearances for each and every theater so operated by Fox-West Coast Theaters, in the City of Los Angeles, California, and in other cities and towns in the southern half of California.

5. That the defendant, Fox-West Coast Theaters . . . . be enjoined from coercing or compelling distributors . . . .

. . . . .

e. To give or attempt to give defendant, Fox-West Coast Theaters, the right to select and contract for motion picture films to be exhibited at the theaters maintained and operated by it, or at theaters in behalf of which it contracts for motion picture films, before negotiations are entered into for film contracts with unaffiliated exhibitors; and

f. To enter or attempt to enter into film contracts whereby defendant, Fox-West Coast Theaters, is given the right to select for

exhibition a certain number of motion picture films from the annual product of certain distributors to be selected by Fox-West Coast Theaters, from time to time during the season for the purpose and with the effect of preventing unaffiliated exhibitors competing with Fox-West Coast Theaters from contracting for and securing any of the product of those distributors immediately after the release thereof because of the requirement that the distributors shall not contract with any other exhibitor until Fox-West Coast Theaters had made its selection.

Nothing in either of the foregoing subdivisions e and f of this paragraph 5 shall be construed as preventing the defendant distributors, acting separately, from entering into contracts with the defendant, Fox-West Coast Theaters, for motion picture films to be exhibited at theaters maintained and operated by or at theaters for which Fox-West Coast Theaters contracts for motion picture films, or from permitting Fox-West Coast Theaters from selecting for exhibition a certain number of motion picture films from the annual product of such distributors, . . . from time to time, before said distributors . . . enter into negotiations or contracts with unaffiliated exhibitors . . . .

6. That the defendants . . . . are enjoined from taking concerted and agreed action to prepare, publish, adopt, attempt to enforce, or enforcing any uniform plan, system or schedule of zoning and/or clearance with the intent or for the purpose of unreasonably—

a. Excluding unaffiliated exhibitors from contracting in the course of the interstate trade and commerce in motion picture films to exhibit first- or second-run or first suburban run in the City of Los Angeles, California, and in other cities and towns in the southern half of the State of California;

b. Excluding unaffiliated exhibitors from contracting in the course of the interstate trade and commerce in motion picture films to exhibit in competition with exhibitions thereof by defendant, Fox-West Coast Theaters;

c. Giving certain designated motion picture theaters operated by said defendant, Fox-West Coast Theaters, an arbitrary and unreasonable protection over competing theaters operated by unaffiliated exhibitors; and

d. Giving motion picture theaters operated by said defendant, Fox-West Coast Theaters, an arbitrary and unreasonable clearance over motion picture theaters operated by unaffiliated exhibitors.

Nothing in this paragraph 6 contained shall be construed as prohibiting Fox-West Coast Theaters from negotiating for or entering into any lawful contract for motion picture films for exhibition purposes with any distributor separately.

7. That nothing in this decree shall be construed to declare a classification of theaters according to the method described in the petition as first-, second-, third- or subsequent-run theaters, or such other reasonable classification as may hereafter be in use in the motion picture industry or zoning of such theaters or clearance and/or protection of motion picture films for exhibition purposes as between theaters, including clearances and/or protection according to runs or price of admission, to be illegal as such or in violation of the . . . . "Sherman Anti-Trust Act", or as prohibiting any defendant from selecting its own customers and bargaining with them in accordance with law, or any affiliated exhibitor from exhibiting at any time its own films in theaters owned or controlled by it.

8. That the terms of this decree shall be binding upon and shall extend to each and every one of the successors in interest of any or all of the defendants herein.

9. For the purpose of this decree in case any defendant is owned directly or indirectly by another defendant, the two defendants shall, so long as such relationship continues, be deemed one defendant.

10. That jurisdiction of this cause be and it hereby is retained for the following purposes:

a. Enforcing this decree;

b. Enabling the plaintiff to apply to this court for a modification, but not for an enlargement, of any of the provisions of this decree; and

c. Enabling the defendants to apply to this court for modification, but not for enlargement, of any of the provisions of this decree on the ground that the same have become inappropriate or unnecessary.

Any application by any party hereto under the foregoing subdivisions, a, b, and c of this paragraph 10, shall be made in open court upon notice to all of the parties hereto, and any of the parties hereto, upon such application, shall have the right and privilege of requiring the production of witnesses upon whose testimony such application is sought or opposed, and of examining and cross-examining such witnesses in accordance with the rules of the Court.<sup>3</sup>

<sup>3</sup> With reference to the protection situation in Chicago, the following statement is of interest: "April 7, 1932, the Department of Justice stated that litigation against Paramount Publix Corporation, Balaban & Katz Corporation and 19 other motion picture distributors, which had been pending for trial in Chicago, had been closed with the signing of a final decree enjoining the film companies and their affiliated theaters from engaging in any of the numerous illegal practices with which they had been charged. The government charged so-called zoning and clearance schedules were used, block booking, and other alleged violations of the Anti-Trust laws." *Moody's Industries*, 1932.

Both before the pronouncement of the decree for the Fox-West Coast Theaters case and since then, the Motion Picture Producers and Distributors of America, Incorporated, supposedly at the instigation of and in cooperation with its affiliated distributor members, has made repeated attempts to devise plans for uniform protection. This organization was particularly active in its attempts to solve the protection problem following the delivery of the Thatcher decree, in October, 1929, which, by declaring compulsory arbitration illegal, caused distributors to question the use of some of their other practices. The plans proposed at various times by the Hays Organization have been designed primarily to fill the needs of the key centers, the local Film Boards of Trade indirectly providing the mechanics of operation.

While uniformity of protection is considered desirable, it is generally believed that no one plan can serve adequately, if applied strictly. Any system of protection needs to be flexible enough to permit its adaptation to the requirements of each key center. Because of the local conditions and geographical characteristics, to which reference has already been made, these requirements necessarily vary as among the centers. The Hays Organization and its affiliated distributors are of the opinion that uniformity within any one key center is desirable and practical, but that to be successful a system must be operated with a full understanding and consideration of local conditions.

All plans sponsored by the Hays Organization have been based on the theory that successful operation of a protection system depends almost entirely on the activity of the distributors and their willingness to act uniformly in each key center. These plans have been made for metropolitan areas only, since in most cases the de luxe theaters, regardless of their ownership, have formed the basis for controversy, and the smaller centers generally do not constitute a problem.

Nearly all these plans of protection have been drawn up by a committee consisting of representative independent and chain exhibitors and representative distributors. As a rule



the independent exhibitors (they do not always cooperate) meet to elect three representatives to collaborate with three similarly chosen chain executives. These groups acting individually or cooperatively then decide upon a plan or plans of protection which they consider desirable. The distributors also appoint a committee of three and likewise provide a plan. Through consultation of the three groups a presumably mutually satisfactory agreement is reached.

The success of the work of any committee in attempting to draw up a protection plan depends primarily on a general willingness to give and take. Moreover, before any plan becomes operative the home-office approval of each distributor is required. This approval is necessary because a large majority of chain theater sales are negotiated at the home offices, and without the cooperation of the officials in charge of such sales no plan of protection would be effective.

Many persons concerned with the problems of motion picture distribution believe that zoning is the solution of the protection problem. Zoning in one form or another has been used in most of the proposed plans. One plan, known as uniform zoning, was conceived during the early stages of the industry's development and was used generally then. The uniform zoning plan for the metropolitan area of the city of Detroit was one of the most successful of these systems.<sup>4</sup> Although this plan was officially abandoned early in 1931, a number of its provisions will merit study as an example of the attempts made to meet the complexities of the protection problem.

The Detroit zoning plan provides for a first and a second run in the city with protection over all theaters in the city.

<sup>4</sup>In New York City, largely because of the importance of the Times Square theaters, the number of theaters operated by five of the major producers, and the large number of independent theaters in the city, the protection problem is somewhat different from that in any other city. It is not uncommon for a third-run theater such as Loew's New York to show a picture the week following its exhibition in the Paramount Theater located immediately opposite on Broadway. This condition apparently does not affect the attendance at the Paramount Theater because of the different type of patrons to which it caters.



After the second run, all the neighborhood or subsequent-run theaters are grouped geographically into neighborhood zones, which are numbered. Each zone embraces the theaters in the immediate vicinity that are in direct competition with each other. In the grouping of the neighborhood theaters, there was found to exist at the time a number of large de luxe neighborhood theaters which, because of their larger seating capacities, prominent locations, presentation of supplementary attractions, service, advanced admission prices, extensive advertising, longer playing engagements for strong pictures, etc., were in a position to draw patronage normally over a considerably larger area than the usual run of low-price neighborhood theaters.

In fairness to these theaters it was uniformly agreed that some arrangement should be made for a limited protection over a larger area than was provided for by the numerical neighborhood zones; consequently key zones or lettered zones were devised providing for certain specified de luxe theaters to secure a limited protection over a considerable number of numerical zones. Because the other theaters in the numerical zones with their limited seating capacities and policy of operation were not under any circumstances in a position to draw patronage over this larger area, they were not indicated as key theaters.

Because of the wide area covered by the key zones, frequently the theaters in a numerical zone were situated in close proximity to one of the two or more key theaters. Since the key theater naturally had a more intense draw from the immediate vicinity than from the outlying sections of the key zone, a provision was made that the theater owner in the numerical zone could designate at the time he contracted for film service whether or not the pictures were to be exhibited prior to his run in the particular key theater situated close to his house. If he was not interested in where the picture played on the prior run, no stipulation was made in the contract, and in the absence of such stipulation it was

understood that the distributor could contract for the prior exhibition of the picture at any key theater he desired.

In the key zone where two or more key theaters were located, the theater buying first run in the key zone could stipulate not more than seven days' protection over all other theaters in the key zone, including the other key theaters in that zone. In the numerical zones any theater could buy first run and stipulate not more than seven days' protection over all other theaters listed in that numerical zone, and not more than seven days' protection over any theaters in adjacent zones listed as "Overlapping". "Overlapping" theaters, as defined in Rule 1 of the "Rules of Operation", were those which might "have protection over another theater outside their zone". Also, a theater in another zone might have protection over an overlapping theater. No protection would be granted over any other theaters outside the numerical zone in which the theater was listed.

Another plan of protection is based almost entirely on admission price. No interval is allowed between runs. The plan used in the metropolitan area of Chicago best exemplifies this system of protection. All theaters located in the loop district and charging admission prices of more than fifty cents standard evening scale are classified as first-run houses. After an interval of two weeks following the runs in the theaters of the loop district, the pictures are made available to the subsequent-run houses in sequence based on admission prices. For instance, houses charging 50 cents are booked the first week, those with an admission price of 45 cents the second week, those charging 40 cents the third, and so on down the scale. Protection periods are not allowed between subsequent runs. Pictures not scheduled for all runs are withheld from exhibition during the weeks they are not booked; for example, a film exhibited in the loop district first run but not booked for showing in a house charging 50 cents is not scheduled for exhibition at 45 cents until a lapse of one additional week.

A third plan of protection, best exemplified by the system used in Los Angeles, combines certain features of the Detroit and the Chicago systems, both location and admission price being considered in the determination of the run status of each theater. The Los Angeles area is divided into zones. The run status of each theater depends primarily upon the zone in which the theater is located. The status is modified, however, to conform with the admission price charged.

The Los Angeles plan was introduced a few weeks before the pronouncement of the final decree of the Fox-West Coast Theaters case. Its introduction was construed by some persons in the industry as a gesture to win the favor of the government. Proponents of the plan declared that it would place the independent theaters in a much better position than they had held formerly. Although the independent exhibitors cooperated at first, they later withdrew their support.

The Cleveland agreement governing exhibition activities in that city, signed by independent theater owners on August 26, 1932, and effective on January 1, 1933, resulted in the withdrawal of a monopoly suit against distributors and Loew's Theaters. The agreement provides for "reduced first-run protection, definite theater classification based on admission price and exhibition policy, and further provides for arbitration in cases of evasion or breach of contract. Double features are barred from all Class A, B, and E houses. Premiums and giveaways are barred at houses in these classifications, also two-for-one admissions are not permitted. However, elasticity is given to the agreement by the provision that any house may double-feature, give premiums, admit two for one, etc., by changing its classification from that of A, B, or E. Changes may be made as frequently as desired, except within a particular run. First-run protection is reduced to 35 days following conclusion of the showing, providing the first-run circuit has also booked a second-run. In the event the circuit has not booked a second-run, then the picture shall be available to Class A houses 28 days

after conclusion of the first-run. Reduced protection is also provided for Class B, C, and D runs.”<sup>5</sup>

Before the adoption of the Los Angeles plan, several local exhibitor associations had refused to cooperate with the Hays Organization and its affiliated distributors in the establishment of plans for uniform protection. The following quotations present representative opinions on both sides of the controversy.

The *Exhibitor*, a Philadelphia publication, on August 1, 1930, made the following statements:

There are a few exhibitors so unfortunately constituted that they can find no good in any suggestions emanating from any other source than their own mentalities. They regard as a distinct work of the devil any proposition made by the producers no matter how much it might be to their own advantage to cooperate.

Facts of the matter are that producers realize excessive protection has been granted to some of the large film buyers. They realize also that this protection does not work to their advantage any more than it does to that of the exhibitor in general. And, since their interests are mutual, they seek to get together with the exhibitors on a matter of equitable adjustment.

They do not seek to further the interests of their chains but rather to curb the power of the chains to hold back the product from subsequent runs. In this the non-chain exhibitor benefits equally with the producer, if indeed he is not the greater gainer. Merely because the proposition comes from the Hays Organization is no reason why this object should be defeated.

Replying to the above quotation, *Harrison's Reports*, August 16, 1930, said in part as follows:

We know, of course, that this is not the motive (sincerity) that has prompted the producers to offer a readjustment of the booking zones. Judge Thatcher's decision against the arbitration boards left the Hays Organization suspended in the air. As the chief excuse for its existence was to supervise and enforce arbitration, Mr. Hays and his lieutenants had to think fast to find something that would justify the two million dollars their organization spends every year in fat

<sup>5</sup> The *Motion Picture Herald*, September 3, 1932, p. 33.



salaries and other expenses. And the zoning rearrangement was the straw that floated their way.

There is no question in my mind that Will Hays realizes fully that protection, as it is now practiced by the producer chains, is illegal, and that he has made an effort to convince the producers that they had better change their tactics before they have another Thacher decision. . . . (The government's case against West Coast Theaters was pending at that time.)

It is manifest that the object of Mr. Hays in bringing exhibitors and producer-exhibitors together to readjust zoning and protection was to give such an agreement the appearance of legality; he could tell the government that it was put in force by an understanding between the parties affected. But in so doing, he used the same old politicians who employed the same old tactics in an attempt to influence the acts of the exhibitors.

In fighting against protection as the producers intend it to be applied, the independent exhibitors are fighting for a principle. They feel that the system is illegal, and to accept the Hays offer for its settlement, no matter what such settlement might be, would be equal to compromising a principle. They want the question determined, not by the producers and exhibitors, but by the courts. If the courts should declare the system legal, they will bow to the will of the law; if they should declare it illegal, they want it banished altogether. Another reason for their refusing to take part in such conferences is the fact that, if the system is illegal, they would run afoul of the law by becoming parties to fixing prices and to imposing other conditions upon the American public.

In July, 1930, the independent exhibitors of northern Illinois (Chicago district) discontinued negotiations for a rearrangement of zoning and for making protection standard, refusing to accept the terms of the producers. In Dallas, Texas, the local exhibitor organization also went on record against the producer-made zoning and protection terms. According to A. H. Cole, president of Allied Theater Owners of Texas, the Dallas Film Board of Trade called a meeting for Monday, July 28. The call was made after Publix theaters had demanded a protection ranging from 30 to 50 miles in radius. The exhibitors' organization, however, at a meeting called for the purpose of discussing its attitude towards the proposals, refused to take any part in the nego-



tiations on the ground that in the state of Texas, an agreement on admission price was, according to legal opinion, a violation of the Texas antitrust law.

The Dallas association issued the following statement :

The delegates from the Allied Theater Owners of Texas elected to confer with other exhibitor representatives and a committee from the Dallas Film Board of Trade regarding a plan of zoning and protection for this state proposed by the committee from the Film Board of Trade, have received such proposed plan and submitted the same in essence to the convention of Allied Theater Owners of Texas in a specially called session at Dallas, July 28. The essence of the plan was laid before the convention in the presence of Mr. Joe Luckett, a member of the Film Board of Trade Committee, who stated that the general outline of the proposed plan was correctly reported.

Basically, the plan is divided in two general heads, both to apply to cities of 40,000 population or over (some 15 or 16 in number) :

(a) Revision and standardization of zoning and protection now existing within the corporate limits of the above-mentioned cities, such revision to take into consideration and be largely based on admissions charged.

(b) "Extra Territorial" protection, in the form of prior dating privileges granted to first run theaters in these same cities, covering against theaters in all towns within the radius of 25 miles.

The convention, after considerable open discussion, voted unanimously to reject the entire plan, and to refuse to become a party to any such agreement. The reasons expressed for such action were as follows :

*Proposal* (a). We feel that the basis of this plan would have the effect to control admission prices and to force a theater to raise prices or to obtain pictures so old that box office value would be negligible. Such action we feel would constitute a direct violation of the Anti-Trust laws of our state; and if the truth became known generally, it would certainly bring grave criticism upon the entire industry, for it deprives the public of the cheap amusement to which they have become accustomed over a period of years.

*Proposal* (b). This we oppose even more strenuously, although the immediate practical effect might be small. Comparatively few would be affected (probably 20 or 25) and possibly even these would not be seriously damaged. However, we would object to this just as strenuously if the radius were 10 miles and not a single member of ours affected at all.

Our opposition to this step is basic in principle. Neither Dallas nor

any other city is entitled per se to picture patronage from surrounding towns, which are separate economic entities. Part of that patronage comes to the big city anyway; but certainly that condition should not be aggravated by artificial barriers of protection. It is an injustice to the exhibitors and an injustice to the public. The entire industry has been built up on the basis of simultaneous showing of pictures on "Main Street" and "Broadway", and the exhibitor has invested his money with the understanding that his was a "first run" theater. To put him back arbitrarily into second run position with no real reason or excuse for such action would be indefensible.

In our opinion it would be the height of folly for any exhibitor to agree to this step. Twenty-five miles and prior dating privileges today would undoubtedly become 50- and 60-day protection tomorrow. The avarice of human nature, and more especially the inhuman rapacity of corporations, would ensure a cancerous growth of this practice, which would be bound eventually to kill the small exhibitor.

It is pitiful and to an outsider probably a humorous picture that we have before us: the million dollar Palace Theater at Dallas, with its uniformed ushers, stage presentations, etc., cringing and asking for "protection" against little "movies" at Garland, Mesquite, Forney, Grand Prairie, Arlington, and what-have-you. David and Goliath had nothing on this pitiful spectacle, and our hats are off to the exhibitors in these communities who surely must have the people of Dallas flocking to their towns to see big features while they are new.

In September, 1930, the protection committee of the Allied Theater Owners of Iowa notified the Film Board of Trade of Des Moines that it was "opposed to protection between towns as drafted and submitted for consideration, and hereby rejects the same". On the day of delivery of this notice the Film Board of Trade sent the committee a copy of the following wire received from C. C. Pettijohn, vice president of the Hays Organization:

Acknowledging telegram. If exhibitors in Des Moines zone refused to participate in conferences to agree upon fair and workable zoning and protection schedules in Des Moines zone, then there is nothing left for the distributors to do but to also withdraw from such conferences and let the circuit and affiliated theaters negotiate with each distributor here in New York on the subject of protection and run. This will probably not result in as fair a schedule as members of your board and unaffiliated exhibitors could agree upon with circuit and affiliated representatives in your territory, but if you distributors

and unaffiliated exhibitors do not want to work it out yourselves and among yourselves with the cooperation of this office, that is the thing for you to decide. A fair and practical zoning and clearance schedule in all territories would bring pictures to every theater quicker and fresher, thereby better serving the public. If the plan is intelligent, every theater will know what pictures are available, and when. Distributors will get their revenue quicker and no theater from the largest to the smallest will be able to unreasonably hold up pictures over subsequent runs, without losing their protection, thus avoiding well-intentioned overbuying in many cases. The continuing zoning committee as suggested would be always on the job to hear any complaint and to make such recommendations to the local board as would permit the righting of any wrong or any inequality whatsoever. Don't permit somebody 1,500 miles away to do something for you that you should do for yourselves when you know you can do it better. Ask all parties to throw suspicion out of the window and all of you make an honest, sincere effort to put down on paper what is fair and right for all parties concerned. If you cannot do this, then there is something wrong with you fellows out there. If you can and will do it, I will undertake to get parties here (New York) to accept any plan that represents the best opinion and judgment of your three groups. Is that a proposition that any of you can afford to turn your back on?

*Harrison's Reports* for October 18, 1930, gave the following reasons for the rejection of the northern Illinois plan of zoning and protection:

The plan was drafted without the consultation of the independent exhibitors. Whether it was drafted in Chicago or in New York, it does not matter, although I personally believe that it was drafted in New York, at the headquarters of the trust; what concerns us is the fact that it was drafted paternalistically, without the knowledge of the independent exhibitors, ably represented on the committee by Mr. Saperstein, President of Allied Theater Owners of Illinois. When it was all ready a meeting was called hastily and the independent representatives were asked to endorse the plan. This was entirely different from the plan on which the exhibitors had worked previously. After hearing all the speeches Mr. Saperstein refused to endorse it. Seeing his inflexibility, the representatives of the Film Board of Trade requested Mr. Saperstein to initial it on the back for purposes of identification. Mr. Saperstein has no faith in initialing a document for identification purposes, and so refused to have anything to do with the document. The result was that the meeting was broken up. A few days later there was a meeting of the organization during which Mr.

Saperstein was upheld unanimously in his action. . . . Thus political manipulation again has failed.

Despite these rebuffs, the Hays Organization in May, 1931, expressed satisfaction with the results which it had achieved. The officials in charge were of the opinion that progress over the next few months would be much greater than it had been in the past.

Opinion throughout the trade, the Hays Organization notwithstanding, was not optimistic in regard to the solution of the problem of securing uniform protection. The Allied States Association of Motion Picture Exhibitors, an organization devoted solely to the problems of the independent exhibitors, was especially dissatisfied with the systems which had been used or attempted. From its inception in 1929, the Allied States Association as a national organization had taken the position that any move on its part indicating its willingness to accept a plan of protection amounted to some degree of approval of the plan. As a result, member organizations had kept out of any protection plan. In the cities where uniform protection had operated, members of the association had not participated. The following resolution, adopted by the Allied States Association during its national convention held in February, 1931, expresses the opinion of that organization on the subject of protection:

*Zoning and Protection—and Previews*

WHEREAS, protection in the motion picture industry has grown from an inoffensive beginning to an intolerable, unfair and complicated system of far-reaching zoning and protection; and

WHEREAS, such system of zoning and protection is being used, maintained and extended mainly for the benefit of affiliated theaters, and chains of theaters; and

WHEREAS, certain systems of zoning and protection, applying to certain so-called key or distribution centers of the motion picture industry, have already been presented to the Department of Justice for their inspection and approval; and

WHEREAS, such protection is often discriminatory and unfair in that



(a) Protection and zoning has been, or may be used solely to the advantage of affiliated theaters.

(b) Protection and zoning has been, or may be used solely to depreciate the value of an unaffiliated, independent theater so that the favored party or parties may later buy said property at an unreasonably low price.

(c) Usual first run protection is now or may be accorded to subsequent run affiliated theaters which present a picture immediately following a normal first run theater's presentation, such extension of protection being contrary to the usual practice heretofore accepted in the industry.

(d) Protection is now, or may be made discriminatory in that affiliated subsequent run theaters may be excepted from waiting the full protection period accorded affiliated first run theaters against unaffiliated, independent theaters.

(e) Protection is now, or may be accorded affiliated theaters against unaffiliated theaters charging as high, or higher admission prices than the protected affiliated theater.

(f) Unreasonably extended protection so delays the showing of pictures that their value is materially reduced by reason of their having been forgotten by the theater's patrons, or at least having ceased to be of interest to them.

(g) And such unreasonably extended protection causes the theaters to receive films so physically aged that they render poor quality pictures, or by reason of their liability to breakers are unsafe to run.

THEREFORE BE IT RESOLVED, that the president of the Allied States Association at his discretion be instructed to appoint, or cause to be appointed by already existing organizations, a committee of three unaffiliated independent exhibitors in each exchange center having an association of exhibitors affiliated with Allied States Association;

That such committees be authorized and proceed to hear the complaints of any exhibitors now suffering from unfair zoning or protection;

That such committees present such complaints to their respective local exchanges for amicable and satisfactory adjustments;

That the committee report to the president of Allied States Association in detail all cases failing such adjustment for their submission to the Department of Justice, or for such action as he deems advisable, and that the prosecution of such complaint by the Department of Justice, or by any means selected be pressed with all the means and power at the command of Allied States Association;

That it is the sense of this convention that any protection which



extends beyond the close of the preceding run, and all protection as between different cities or towns, is unfair;

AND BE IT FURTHER RESOLVED, that the president of Allied States Association be further instructed to oppose any purported zoning plans already submitted to the Department of Justice, which may appear to him, or the committee appointed by him in the zone or zones affected, to be unfair.

Under the proposed Optional Standard License Agreement of 1933, protection and run are controlled by the seventh and sixteenth clauses. The seventh clause reads as follows:

SEVENTH: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "protection period" if any in the Schedule specified at any theater therein named or within the territorial limits therein specified. Such period of protection as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If protection is granted against a named theater or theaters indicating that it is the intention of the Distributor to grant such protection against all theaters in the immediate vicinity of the Exhibitor's theater then unless otherwise provided in the Schedule, such protection shall include any theater in such vicinity thereafter erected or opened.

The sixteenth clause provides that if an exhibitor is granted a first run he must show the picture within the period beginning with the date scheduled for general release and ending 120 days thereafter. If the first exhibition date shall occur on a date later than 90 days after its announced general release date then the period of protection of such motion picture shall be reduced so as to expire 120 days after said schedule date of its general release. If the exhibitor is granted the first run and fails to exhibit the picture within this 120 days, "the protection period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due". A similar type of restriction is made applicable to second- and subsequent-run exhibitors. This

clause also provides with respect to extended runs that "any of the motion pictures which shall have been exhibited at any theater in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this clause."

In respect to pictures which are notably successful and for which long runs are distinctly profitable another type of problem arises, which is not yet solved. Ordinarily a good picture introduced in a first-run house will be continued in that house as long as it is profitable. Such a theater would be very loath to surrender a picture to second-run houses so long as it was still making money from the film's exhibition.

In most instances the endeavors to establish zoning systems throughout the country have not been successful. The most recent zoning plan proposed by the Motion Picture Producers and Distributors received serious objections from the independent exhibitors, particularly through the Allied States Association. Undoubtedly one of the principal difficulties centered around the problem as to who was to establish the zones and whether supervision of the zoning should be centralized or decentralized. Independent theaters were quite unwilling that it should be done under the supervision, in theory if not in fact, of the Hays Organization through the local Film Boards of Trade. The establishment of a central zoning committee, as recommended by Allied States, on the other hand, raised objections as to cost and as to personnel.

Another issue, of course in the background, was as to who should control the personnel. At any rate these objections proved serious enough so that, when they were augmented by charges of conspiracy by Allied exhibitors and a test case was filed by an exhibitor in Iowa, all efforts to establish the Hays Organization's zoning plan were definitely dropped for the time being. It is entirely probable that the issue may be raised again. The controversy over protection has aroused some very bitter feeling. There is no doubt that in the course of time a series of court rulings testing its application under

the Federal Anti-Trust Law will be absolutely essential. The independent exhibitors are thoroughly satisfied from their experience that no major distributor permits individual theater owners even to bid for the first run of his product wherever the producer-controlled theaters are in the same neighborhood, nor are the independents permitted the privilege of showing their products simultaneously with the established producer-controlled theaters.

A measure introduced in North Carolina and backed by a number of theater owners proposed to abolish all first-run classifications. The result would be that every exhibitor would have an opportunity at every booking and every theater that booked a picture could show it simultaneously. Another measure designed to secure a revision of the protection practice has been introduced by Senator Brookhart. Neither of these two proposals has received very general support, even from the independent exhibitors, and it is not likely that they will become legally effective.

One independent exhibitor, at least, has taken sharp issue with the producers who declare that if protection is eliminated there will be no first run. He is quoted as saying:

. . . . No question is raised as to legitimacy of wholesale buying power of producer-controlled theaters as in all other types of business, but we do contend that the exclusive grant of priority of retailing their product is a direct violation of the laws of this country.

To sum up, we claim that if an individual retailer is willing to pay the manufacturer-retailer a sum of money consistent with the retailing privilege of that product, the retailer should not be restrained from retailing such product until after the manufacturing retailer (producer-distributor) has first retailed the same product in the same neighborhood for such a period of time as he sees fit, which period of time is sufficient to secure the great majority of all possible retail sales in that community.<sup>6</sup>

Certain individual national distributors undertook to deal impartially with the problem of protection through an "exclusive-run" policy announced during the summer of 1932.

<sup>6</sup> *Variety*, March 4, 1931.

The plan, which was endorsed particularly by the Metro-Goldwyn-Mayer Pictures Corporation and the United Artists Corporation, provided in substance for the classifying of product according to its quality and confining the exhibition of certain pictures or certain classes of pictures to certain theaters. Thus, United Artists classified its product into "A" and "B" pictures, making available to Class A theaters the "A" pictures, and to all other theaters, the "B" pictures only. Under the Metro-Goldwyn-Mayer plan, exclusive territorial exhibition rights were to be sold "wherever deemed advisable and wherever such deals are consummated. None of the Metro pictures involved would be exhibited subsequently in the territory affected."

Various reasons were advanced for attempting the experiment. One of the alleged reasons, namely that "theatergoers will be protected from encountering a 25-cent picture in a 50-cent house", may be dismissed without serious argument. The real reasons undoubtedly were found in the amount of litigation and of threatened legislation with reference to zoning, the inability to work out a mutually satisfactory protection plan, and the effort to bolster up the income on the first-run, deluxe houses which were not proving profitable.

Opposition to the proposed exclusive-run policy developed very promptly and very vigorously among exhibitors and among various organizations interested in motion picture problems. As a matter of fact, many major executives in the industry were critical of the experiment from the beginning, probably for a very good reason. In view of the fact that the policy was practically abandoned early in 1933, there is no particular reason for entering into a discussion of the soundness of it. It will be sufficient to indicate that, if the exclusive-run policy was sound, then most of the major tenets of the production philosophy of the industry were unsound.

The abandonment of the exclusive-run policy was succeeded by a proposal for flexible admission prices which it was hoped would stabilize admissions, terminate price cut-

ting, correct the so-called "monopolistic" phases of exclusive runs, as well as bring about other advantages.

What the outcome of the controversy over protection will ultimately be no one can at this moment foresee. Not many years ago many persons would have contended that the system of arbitration established in the motion picture industry would never be abandoned. Actually it was overthrown by the courts, although in essence it appears to have reasserted itself with substantial modifications. It is not inconceivable that by one means or another the motion picture industry will undergo the same experience with protection. Whether modifications are compelled by legislative enactment or by judicial interpretation of existing statutes, or merely as a result of a realization on the part of distributors that some consideration may well be granted before still larger concessions are forced from them, cannot be predicted. That this system has been abused, that it has been applied by short-sighted executives as an artificial protection against competition, there seems to be but little question. There can be no more doubt as to the inability of such distributor-exhibitors to retain what is probably a socially uneconomic practice. All of which does not mean that protection will disappear—it is too firmly established for that—but that it will undergo substantial change is certain.



## CHAPTER VIII

### ADVERTISING

IN the Standard Exhibition Contract in use up to the time of the 5-5-5 conferences,<sup>1</sup> Section 12, which dealt with advertising, read in part as follows:

In all newspaper advertising and publicity issued by the Exhibitor relating to photoplays, the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition of said photoplays must be leased from or through the Distributor and must not be sold, leased, or given away by the Exhibitor.

For a good many years the distributor has inserted a clause in the exhibition contract which gives him the right largely to control the advertising matter used by exhibitors. Although in point of fact, compliance with this provision is not always insisted upon, the thought is that in general it should be complied with. It does not, of course, prohibit the exhibitor from supplementing such advertising with exploitation methods of his own. But the assumption is very definite that nothing of a published character should be used that does not meet with the approval of the distributor.

The reasons underlying this provision are undoubtedly two, one being substantially more justifiable than the other. The first argument is that the exhibitor cannot do so good

<sup>1</sup> In the Standard License Agreement drawn up at the 5-5-5 conferences, the exhibitor's only agreement in respect to advertising accessories is that he will not sell or lease such accessories as he purchases from the distributor. Most of the individual company contracts stipulate that the exhibitor shall buy all accessories from the distributor.

a job in the preparation of publicity material as the distributor—he does not know the picture so well; he cannot possibly employ such an array of advertising talent as is often available to the distributor; and, since the distributor prepares advertising copy for all theaters exhibiting a particular photoplay, he is able to do it more cheaply than can any individual exhibitor, whose requirements are restricted to those of his own theater. The second reason for this provision is that distributors can and in many cases do charge the exhibitor for such advertising at a price which returns a profit to the distributor. Naturally the latter is loath to surrender the right to any business which might add to his net profit. The thought undoubtedly is that if the individual exhibitor undertakes to secure his own copy he will have to pay substantially to get it, thus rendering a profit to the source from which the material is secured. If the distributor undertakes to do the same thing, not only will the copy be better but he will be taking unto himself only the same profit that otherwise would go to someone else. There is probably some justification for this line of reasoning.

So far as this second reason is concerned, however, there is an opportunity for argument. While an exhibitor often would pay the same price or more to an independent advertising agency for his material, yet in many cases he would prepare his own advertising material. He naturally feels somewhat aggrieved that he is compelled to use material which he deems not entirely necessary and which in any event is apparently forced upon him whether he likes it or not, giving him no alternative of obtaining publicity material wherever he sees fit to obtain it. The thing to which he may object is undoubtedly the fact that by the contract he is required to give his business to a particular company and to pay the price which that company considers satisfactory. As a matter of fact, if the distributor is really concerned with the preparation of advertising material that will attract patrons to a theater, in order that through the success of the picture he may receive a larger rental, then it may well

be questioned whether he is entitled to any profit on his advertising business as such. If the real purpose of his advertising is to improve the attractiveness of his picture, he can well afford to sell it to the exhibitor at cost.<sup>2</sup> If this means a lower price than he formerly charged, it should result in its increased use by the exhibitor. If the distributor did not care to reduce the price, he could then possibly improve the quality.

However, the essential reason for this control over exhibitor advertising on the part of a distributor is undoubtedly in order to insure the performance of a better job. It must be admitted by all that a great many exhibitors are not in a position to do a good piece of work with exploitation. As a matter of fact, many exhibitors do not appreciate the necessity of doing a great deal of promotional work. They feel that the mere announcement of the picture is enough. If the picture does not attract, the fault is that of the picture, not of the exploitation. In this, naturally, they are wrong; so long as they feel this way about it, however, the distributor is undoubtedly justified in using such means as he has at his disposal to protect both himself and the exhibitor against insufficient publicity. In the second place, many exhibitors undoubtedly are not qualified to do a good job with publicity even though they appreciate its value. This is particularly true, of course, in the small theater where the manager has very little help. He cannot be expected to be equally expert in every department of theater operation. He must be a good all-round manager. Just because he is a good all-round manager, he is not likely to be a specialist in anything. This applies quite as much to his advertising ability as to his other qualifications. Certainly he can hardly be expected to perform some phases of the advertising function so well as do advertising experts.

At the same time, it must be borne in mind that the force of much advertising is in its adaptability to local conditions

<sup>2</sup> One distributor has been experimenting with a policy of renting posters instead of selling them outright.

and its ability to appeal to local motives. It by no means follows that, because an advertising agency in New York City can prepare standardized copy for national campaigns far better than can some local theater manager, the agency can develop advertising which shall be particularly forceful in each individual community.

Another important reason that the local theater manager does not always do so good a job as he might is that advertising is one place where he can cut down on expenses. Not having too much profit anyway, he is likely to feel that he cannot pay enough to get either the quality or the quantity of advertising that a distributor might consider essential.

These things being true, it may be worth while to consider the promotional work of distributors. Such a discussion naturally involves a consideration of all the various aspects of exploitation such as trade paper and newspaper advertising, national magazines, exploitation of theaters, trailers, and the like.

The use of trade advertising as providing a general preliminary announcement of the offerings of a distributor is of great value. Exhibitors come to look for such announcements and doubtless read them with great care. The exhibitor is interested, furthermore, in facts relative to cast, story, director, and the general reputation of the producer. Since so large a proportion of the sales are made to the chain theater organizations through direct personal contact, the usual forms of motion picture trade advertising are of somewhat less importance now than formerly. The buyers in these instances probably know as much about the picture as do the salesmen, and hence general trade announcements are less effective.

Two distinct criticisms may be made of most trade advertisements. One is that they tend to be extremely blatant even for ordinary pictures. When a distributor wishes to describe a really exceptional picture, he is frequently at a loss for vocabulary with which to do it. A second weakness is partially a result of the first; namely, that most trade advertising

is very substantially discounted by exhibitors as being over-optimistic though not actually untruthful.

It may be seriously questioned whether the policies followed by distributors in the past relative to trade advertising have been so productive of results as they should have been. The necessity for and the real value of trade journal advertising are not to be discounted, but that it has not been used in so efficient a manner as possible is true. Frequently, the advertising has been dissipated over too many trade journals. There are approximately 60 or 70 trade and "fan" publications of which over one-half are directed specifically to exhibitors. Undoubtedly but a very limited number of these reach many exhibitors. Granting the necessity of a number of worthwhile trade journals, one might reasonably raise the question as to whether or not distributors are wasting money by advertising in a very considerable number of journals of rather dubious value.

Irrespective of the value of trade journals to exhibitors, and irrespective of whatever monetary returns the distributors may obtain as a direct result of such advertising, it has sometimes been contended that certain distributors carry advertisements in the more influential trade journals because of a desire to obtain favorable editorial support. This, it is held, is extremely important, particularly where frequent differences arise as between distributors and exhibitors.

Direct to consumer advertising has received much more emphasis in later years than during the earlier history of the industry. The reasons that the emphasis upon such consumer advertising was not undertaken earlier are understandable. They are based essentially on a number of factors. The first is the difficulty of timing advertising with the showing of a picture in any particular theater. Throughout the country the life of a picture is likely to run to nine months, a year, and more. This may mean a tremendous number of exhibition dates. To time any particular advertising with this great multiplicity of dates naturally appears impossible. Such advertising may stimulate the value of a picture for box



office purposes during the first runs, but it is not likely to be of great value after that time. It is generally felt that, to be effective, advertising of an individual picture must be read by the consumers shortly before that picture is exhibited in a theater in that city. An advertisement which appears after the showing of a picture obviously has no effect. If on the other hand it appears too long before the showing of a picture, it then creates the impression that the picture in question is old and that it is being shown in that particular theater long after it has been shown elsewhere.

There are several reasons for the rather general use of direct consumer advertising in recent years. The entrance of producer-distributors themselves into the exhibition field was doubtless a factor. The depressed condition of the industry in 1926 and 1927 may have suggested the necessity of undertaking something new. A belief in the inadequacy of exhibitor effort probably played its part. The success of manufacturers of other products, who had successfully appealed directly to consumers in selling their merchandise, suggested to the motion picture companies that they might do likewise. The growing interest of banking firms and electrical companies in the motion picture industry possibly was a contributing factor in bringing about the new policy. Finally, when one large producer-distributor undertook direct consumer advertising on a large scale, others felt more or less compelled to follow his example in self-defense.

Some companies have undertaken newspaper campaigns relative to groups of pictures in particular, not so much for the purpose of influencing the consumer as to support the salesman who was at that time engaged in selling the coming season's product to the exhibitors. In such cases it has been hoped to stimulate the theatergoers who read the advertisements to make inquiry of their local theater managers and request that they show certain photoplays. Furthermore, the distributors who have planned such campaigns have hoped to impress the exhibitors who have purchased the company's product with the idea that the company was giving them

substantial advertising support. Incidentally, of course, such an effort might assist the exhibitors who had already purchased the pictures to increase their box office receipts during the weeks in which they were showing the pictures of that particular company.

In at least some cases where newspaper advertising has been adopted for the reason suggested, namely, to support the sales organization of the distributor rather than to be of any particular assistance to the exhibitor, the companies seem to have believed that the results were successful. In several instances, although the company's pictures were of no better quality than they had been the previous year, contracts at the end of the calendar year measured in terms of gross revenue were well in advance of the contracts consummated for the end of the previous year, and the company's executives attributed at least part of the increase to a use of the newspaper campaign.

Direct consumer advertising of motion pictures is unquestionably valuable, and in most cases well repays the expenditure. Granting the value of an excellent title for a picture and the unfortunate results which follow from an unwise selection of a title, it is still true that the public has become very skeptical of the accuracy with which titles describe pictures. A common belief prevails in the industry that the director's name has value in advertising. Except in very rare cases this is probably not true. The name of a star or the description of the plot doubtless has greater weight. Inasmuch as this information, combined in a general announcement of the pictures produced by a given company, may be presented in such a way as to cause the public to look forward to seeing those pictures, it does have real value.

Consumer advertising is also a tremendous selling argument in dealing with an exhibitor. Statements in the advertisement such as "Ask your local exhibitor when this picture is coming" are intended to bring pressure to bear upon the exhibitor to buy. Undoubtedly, the fact that consumers have

been informed regarding certain pictures does reduce the sales resistance both for the distributor's salesmen and subsequently for the exhibitor.

The attempt on the part of a company to stimulate primary demand shows a proper understanding of buying motives. The need for such stimulus is often very real. A sufficient amount of time should be allowed for its accomplishment; a company probably should continue this type of appeal in some form long after the principal emphasis has been shifted to its own pictures. One important distributor undertook to stimulate primary demand in an important church publication, but aroused so much opposition that the editors were compelled to request the company to withdraw its account. Even though competitors are benefited, a company may adopt a farsighted policy in attempting to stimulate primary demand. Announcements in fan magazines can remain selective in motive as directing attention to the company's pictures at all times. In this respect it should be noted that one of the difficulties encountered in consumer advertising concerns the effectiveness with which the trade name of a company can be made influential to the public. Some companies have made a particular effort to do this. The Paramount Publix Corporation, for example, has spent tremendous sums in the *Saturday Evening Post* and elsewhere to convince the public that if it is a Paramount picture it must be good. The advertisements of some companies are hideous examples of inconsistency in themselves, but the general idea is essentially sound.

Assuming that people are interested in motion pictures as such, it is necessary to determine the basis upon which to interest patrons in specific pictures. Contrary to a common belief in the industry, it is to be seriously doubted whether the trade name of a distributor, with the possible exception of Paramount, carries much weight with the ordinary patron. Even the names of outstanding stars or stories lose some significance when a substantial interval of time intervenes between the appearance of the advertisement and the

exhibition of the picture. It is probable that general distributor advertising may well be confined to emphasizing coming events of outstanding significance in the hope that local advertising may later be effective in causing a recurrence of an interest aroused earlier.

There is an interesting question as to whether national or sectional advertising might not well stress the names of distributor-controlled theaters from time to time. Emphasis could be placed upon the convenience of such theaters, the courtesy displayed, comfortable seats, good ventilation, etc. This would also have an advantage in that it would, in part, obviate the necessity of attempting to time announcements with exhibition. Furthermore, in all theaters today pictures of various producers have to be shown. It may be urged that independent exhibitors might object to such advertising. While this argument has weight, it would seem to be significant only where independent exhibitors actually compete with distributor-owned theaters. In such cases the chain theater wants the business anyway and cannot expect to make sales to independent exhibitors. Where such competition does not exist, the independent exhibitor has no ground for complaint. Up to the present the names of the theaters have been presented to the public through local advertising. This would always be necessary, but it would be an interesting experiment for a distributor owning nation-wide chains to attempt occasionally to stress the names of his theaters.

The problem of consumer advertising for superspecials and roadshown pictures, in which the primary emphasis is upon the showings by the key exhibitors, is not quite the same as for ordinary feature pictures. To cite a specific example one might refer to the experience of the Pathé Exchange, Incorporated, with "The King of Kings". The picture was roadshown prior to the time that it was sold to the exhibitors. As a roadshown picture it was markedly successful, and exhibitors were in many instances anxious to obtain it. It was a motion picture of especially high quality and, therefore, lent itself admirably to an aggressive sales cam-



paign as a superspecial. Experience has made clear that no amount of sales promotional work can make a success of a poor picture. Box office receipts may be high for the first few exhibitions. Word-of-mouth criticism, however, invariably causes a sharp reduction in attendance, regardless of general advertising, when a picture is of poor quality. The same principle operates in the reverse manner. A poorly advertised picture may, during the latter days of its run, prove unusually successful because of word-of-mouth comments. In other words, the quality of the picture is, after all, the essential thing.

It may be noted, in passing, that in the selling of "The King of Kings" a large amount of responsibility was placed upon salesmen. This responsibility extended even to the determination of the particular form of percentage pricing to be followed, as well as to decisions on datings. In the present instance this was probably wise.

The advertising problem was somewhat simpler in this case than where an ordinary feature picture is presented. Seventy per cent of the advertising was directed to the consumer. The publicity was confined to exploiting the merits of a single picture. The difficulties usually encountered in attempting to time advertising with exhibition were largely avoided by arranging for the simultaneous release of the picture in 500 theaters within the first three weeks after the appearance of the advertisements. The provision for definite commitments on the part of exhibitors on advertising appropriations was based upon the idea that the local exhibitors should cooperate largely in local appeals. The value of such local cooperation is unquestionable and applies to features and other pictures as well as to superspecials. Pathé's experience in the advertising of "The King of Kings" is of particular interest because, at least as far as sales promotional work is concerned, there has seemed to be somewhat of a tendency to stress individual pictures more and blocks of pictures less than formerly.

Some interesting problems arise in connection with the



roadshowing of pictures. The early success of roadshown films doubtless resulted from the fact that such pictures were of a distinctly superior grade, as compared with the average program pictures of that period. The public would have attended certain of these exhibitions in any event, because of the belief that a picture shown in a legitimate theater would be one with a special attraction. As time went on, however, an increasing number of pictures were roadshown, and in many cases these pictures were not notably better than many which were exhibited in motion picture houses. The public lost its interest in such pictures, therefore, particularly when advanced admission prices were charged. It was inevitable that the roadshowing of many of these pictures should result in losses. The question then arose as to what disposition to make of these losses.

The policy of adding the losses which developed on roadshown pictures to the cost of the negative may be justified only on the assumption that such pictures were roadshown primarily for exploitation purposes. It is interesting to note that in some cases a company has deducted from the cost of the negative the profit made on at least one picture and has sold the picture to exhibitors at a lower price in consequence. If the picture was so successful as a roadshow that it made a profit when most of such pictures resulted in losses, it might be argued that the company was in a position to charge exhibitors more, rather than less. One suspects that in most cases distributors would be likely to adopt this latter policy, especially since they feel that there is little relation between negative cost and rental value.

The policy of exploiting pictures on Broadway is one which is open to some question. If, as is known to be the case for some companies, a majority of pictures so shown result in losses, the only justification for Broadway exploitation lies in the belief that exhibitors buy more readily pictures which have been previously so exhibited. It is not clear, however, that even this advantage is derived by the distributor. In many cases exhibitors throughout the country

are unwilling to pay higher prices for such pictures. Furthermore, let it be repeated that there is no assurance that a Broadway success guarantees success in the rest of the country. Then, too, it should never be forgotten that the inherent value of a picture is the thing which makes it a success. The tendency on the part of distributors to exhibit on Broadway pictures of no particular outstanding merit, to offer but two exhibitions a day, and to charge advanced admission prices to such showings, undoubtedly has lessened the value of Broadway showings.

If this reasoning is correct, the logical question to ask is whether an amount of money equivalent to the losses on such exhibitions could not be more profitably spent on improving the quality of the picture, or in some other form of advertising. It would seem that either of these policies is, in the main, preferable.

Two other considerations, however, should be borne in mind. The first relates to the independent producer who owns no theaters of his own and who must rely for his distribution very largely upon sales to the large chain theaters. Such a producer may have an additional sales argument when he can show that his particular picture was well received on Broadway. Whether or not the value of this argument is great enough to compensate for the losses which he probably will incur in many instances, as a result of such showings, is an open question. If, as is probably true, the buyer for a chain of theaters judges the value of a picture from an actual observance of the picture and an estimate of its value, then the argument for exploitation is materially weakened. It loses still more of its force if it is realized that Broadway acceptance does not guarantee nation-wide acceptance.

The second consideration has to do with the policies to be pursued by companies which own Broadway theaters. It would be better to keep such houses open and get whatever income might be derived from them, even though some loss might be incurred, than to close them altogether and thus

suffer a still greater loss. Much may be said for the policy, in such instances, of operating these houses for such returns as may be derived from them, rather than proceeding on the theory that they are primarily exploitation centers. The showing of good, high-grade pictures particularly adapted to New York audiences, at more moderate prices on a continuous-run policy, would seem to be a logical solution.

Another important phase of publicity is to be encountered in the use of trailers. Motion picture trailers are short reels of usually not more than 800 feet of film each, their purpose being to advertise the future exhibition of certain feature pictures. Trailers usually are shown in theaters one week or more in advance of the exhibition in those theaters of the feature pictures which they represent. Although trailers vary in type, as a rule they are short descriptive skits or a series of scenes adapted from a given photoplay. Some trailers include titles and subtitles, others animations, and still others a combination of both. Animations, defined with reference to their use in conjunction with motion picture trailers and screen announcements, consist of titles, subtitles, and other printed material which are superimposed on a background of caricatures, still and action pictures, and similar photographic effects.

The use of the trailer as a widely used medium for advertising motion pictures dates from 1920. Before that time, exhibitors were accustomed to announce their coming attractions on slides known to the industry as "stills". The few trailers in existence in 1920 generally were of an inferior quality and as a result were ineffective. They were adapted by motion picture producers from the original negatives and were distributed by the producers without charge to the theaters booked to exhibit the pictures from which they were taken. Foreseeing the possibilities offered in this field, several companies were organized to produce and to sell motion picture trailers.

In the period following 1920, trailers became universally recognized as a valuable adjunct to motion picture advertis-

ing, and as a result the more progressive trailer companies developed rapidly. Their organizations comprise men thoroughly experienced in motion picture production, distribution, exploitation, and advertising. While an integral part of the motion picture industry, trailer companies function primarily as agencies, whose scope of activity is confined to a specific form of advertising for this particular industry. The advent of sound opened many possibilities for the development of trailers.

At present, trailer companies, in general, are of two types—local and national. There are about 35 local companies, which usually confine their activities to screen announcements. There are but two national companies of consequence: the Advance Trailer Service Corporation, which specializes in still, portrait, and trick photography trailer reproduction; and the National Screen Service Corporation, which, through arrangements with most of the well-known producers, holds exclusive rights to production and distribution of trailers containing actual scenes from each feature picture released by those companies. Since motion picture producers use several cameras in filming a motion picture, there is always some unused footage from which a trailer company can select negative for its use. As compensation for granting trailer rights, motion picture producers usually receive minimum royalties based on negative film footage.

The production of trailers adapted from feature picture negatives centers in New York City. Since a large majority of motion picture studios are located in southern California, the National Screen Service Corporation maintains a staff of experts in Hollywood to advise producers on the selection of scenes in which the interest factor is such as to make them readily adaptable for trailer purposes. The selected scenes usually approximate 800 feet of negative film for each picture. This film is forwarded to New York for printing and trial projection. The second step in the production process involves further editing until the length is so appreciably reduced that only the climactic scenes remain. Animations,



titles, and subtitles are then added and a trial print is projected for final inspection before the article is pronounced ready for distribution. When color sequences are inserted in the trailers, the development and printing process is performed by companies which specialize in natural color photography. The advent of sound pictures complicated the production problems of trailer companies. Expenses were increased considerably because of the necessity of leasing sound equipment, paying the royalties thereon, and securing the services of experts in sound reproduction, transposition, and duplication.

National trailer companies distribute their product through exchanges located in New York, Chicago, and Los Angeles. Sales offices are maintained in some of the principal key centers throughout the United States. Mail order selling is customary where exhibitors are small and are located at great distances from the regularly traveled routes. In general, however, the personal efforts of large salesforces are required to produce satisfactory results.

The trailer service contracts to exhibitors used by the National Screen Service Corporation are usually for one year's duration. Prices for the synchronized product range from \$7.50 to \$20 per trailer. The highest price is charged when a theater changes its program once a week; the lowest, when three or more changes are made every week. Silent trailer prices range between \$5 and \$25 a month, the amount being dependent upon the material contents of the trailers, the number of trailers required, and their age as based on the picture producer's announced date of release. In general, the lowest prices are paid by subsequent-run theaters. Although the National Screen Service Corporation makes many sales to chain companies, it sells to each theater as a unit. Chain theaters are not permitted to transfer trailers within their organizations.

Concomitant with the making of a contract between the National Screen Service Corporation and an exhibitor, the salesman making the sale endeavors to secure a complete list



of the names of the pictures which the exhibitor has booked, including for each picture its distributor, the company releasing it, the stars playing in it, and (if known) the booking dates for it. In most instances, however, it is impossible for the exhibitor to know every playing date far in advance of exhibition. The company, therefore, supplies the exhibitor with booking sheets and instructs him to send in his datings as soon as he knows them, requesting him to take precaution to fill in the exact starting and closing dates of each picture and the name of the company releasing it. The company further instructs him to indicate any changes in booking dates previously submitted and to note any substitutions.

The entrance of large producer-distributors into the field of production of their own trailers was noticeable in 1927-1928. Except during a very early period in the industry's history, producers have refrained from engaging in the sale of accessory articles such as trailers which it is felt that some exhibitors might seek to acquire without charge. Furthermore, since flat rental price policies are the customary practice in the industry, it is not incumbent upon the producer-distributor to provide a form of advertising, so it is said, the benefits of which accrue directly to the exhibitor. However, Warner Bros. Pictures, Inc., in common with some other companies, became convinced that the relegation of its trailer service to an outside company was not in keeping with sound business practice. The company decided, therefore, to establish its own trailer service. Three factors, all closely related, were particularly important in causing this decision. These were the advent of sound, the expansion of producer-distributor controlled chains, and the general adoption of percentage pricing in the industry. The experience of Warner Brothers may serve to illustrate the significance of these developments.

The introduction of sound motion pictures necessitated numerous changes in the fundamental character of trailers. Whereas formerly the most effective products consisted of series of climactic scenes, usually interspersed with an equal

or even greater number of caricatures, animations, and titles, the synchronized trailers, in a large measure, emphasized dialogue and music. Furthermore, the use of a trailer skit participated in by members of the cast appearing in the respective feature pictures was believed to provide, in many cases, a more effective advertising medium than a trailer comprised of only a group of scenes taken from that picture.

Trailer companies, for several reasons, were not equipped to produce this type of dialogue skit. The inaccessibility of the members of the casts, the costs involved, and producers' contracts were obstacles of major importance. Such barriers did not confront Warner Bros. Pictures, Inc. Furthermore, since to duplicate and reproduce sound, trailer companies required expenditures for equipment and the maintenance of an operating staff, the prices of their products to exhibitors were greatly increased. Warner Brothers, however, without additional expense could utilize the service of its regular equipment and staff of technicians, thereby effecting maximum economic efficiency. It had a further advantage in that it could make full use of its Vitaphone sound-recording process.

The acquisition by Warner Brothers of about 400 first-class theaters was instrumental in the establishment of the company's trailer service. There were several conditions which made this service desirable. First, each of these theaters required comparatively large annual expenditures for trailers and sundry other screen announcements. The aggregate amount of these expenditures would in a large measure defray the cost of producing and distributing trailers for all Warner pictures. Therefore, it was considered uneconomical to continue to purchase an auxiliary service which the company itself was well equipped to undertake. Secondly, the company wished to secure as effective advertising as possible for its pictures. Since it believed that trailers constituted one of the most important media of advertising, it was interested principally in providing its theaters with trailers of excellent quality. By maintaining its own trailer service, it

could provide a product of consistently high quality at costs which would be insignificant when compared with the results achieved. On the other hand, the production cost was of vital importance to companies whose source of income was derived solely from the sale of trailers and screen announcements. For this reason, definite limitations were placed on the material contents of the product of these companies.

The general acceptance of percentage film rental policies by the motion picture industry in 1928 and 1929 made possible the utmost cooperation between producer-distributors and exhibitors. Under the flat rental method the distributors naturally wanted the exhibitors to achieve success and often aided them by participating in the expenses of local advertising campaigns. However, they were not vitally interested in the purchase of trailers for their pictures, and consequently the booking of trailers rested entirely with the exhibitors.

Percentage price policies, in that they provided for an equitable distribution of box office receipts between the distributor and exhibitor, changed the nature of this situation. As a result of this development the need for a company trailer service became apparent to Warner Bros. Pictures, Inc. In the first place, the company realized the advisability, not only of showing any trailer for each Warner picture, but of showing one that could produce maximum results. The possibility of increased box office receipts was of much greater importance than the production costs of trailers or the prices paid for them by exhibitors. It was recognized, furthermore, that the exhibition of a complete Warner program on a percentage rental policy might warrant the free distribution of trailers to the theaters booking such programs. Obviously an independent trailer company would not fit into such a situation.

In accordance with its decision Warner Brothers organized, as a division of the advertising department, a department for the production of trailers. Since members of the company's regular staff could be employed in such produc-

tion, the personnel of this department was not large. Distribution was effected through the regular channels by the company's 35 exchanges without any increase of their general operating expenses. Selling was conducted by the regular salesforce in conjunction with the sale of feature pictures. Price policies used in the sale of trailers varied in accordance with the contract for the feature picture which a trailer represented, and for other products of the company. In general, however, trailers were distributed to exhibitors either for a flat rental price or without charge. Free service was granted to the larger theaters which exhibited a complete Warner program (not including newsreels) on a percentage arrangement. When fees were charged for trailers, the prices involved were much less than those charged by independent trailer companies. In dealing with its own theaters the company followed much the same policy as with theaters of its competitors.

After several months' trial the company was satisfied with the results achieved by its trailer department. The president believed that the 35 exchanges had provided a service which theretofore had been impossible in the distribution of trailers. Furthermore, because the company was in a position to effect maximum cooperation with exhibitors, it was able to maintain its stock of trailer prints at a minimum.

There are two primary considerations involved in this discussion: one has to do with the value of trailers as advertising; the other relates to the best policy to pursue in the production and distribution of such trailers.

Trailers are essentially a form of advertising and must be judged as such. Their value is dependent, therefore, upon the interest which they can arouse in forthcoming exhibitions. As an advertising medium they possess certain real advantages. First, the trailers constitute a direct consumer appeal to a class of people easily influenced by such appeals; namely, those already disposed to attend motion picture theaters. This very fact, however, indicates a limitation of the influence of trailers; they obviously have no direct weight



with those not already patrons. Secondly, the exhibition of trailers can be timed so as to yield the best possible results, since generally they are used only for pictures exhibited at a particular theater on specific dates. The individual theater, therefore, capitalizes to the utmost on the effort.<sup>3</sup> Finally, patrons cannot avoid submitting to the appeal, whereas printed advertising may not be read by any considerable number of people.

On the other hand, it must be said that many trailers are both misleading and ineffective. They are ineffective because they frequently are made up merely of sequences clipped from a feature picture, and the sequences are not always chosen with real appreciation of the most effective interest factors. They are often decidedly misleading in that they do not fairly represent the real character of the play. In other words, though the trailer may be actually composed of sequences from a picture, the picture itself is not fairly sampled, but is actually misrepresented by the trailer. It may also be noted that in some cases trailers have been wholly silent, though representing sound pictures. Hence the audience is given no opportunity to judge the quality of the voices or the effectiveness of the dialogue and the supplementary sound effects.

In general, it is believed that a more effective presentation is possible when a separate skit is specifically written and filmed for each particular picture than where a series of isolated scenes is offered. Not only can the appeal be more pointed and hence more effective, but a fairer summary of the picture can be given. Moreover, and of paramount importance, a real interest in the trailer itself can be developed. When actual entertainment value is given to the picture itself, closer attention is devoted to it by the audience. Instead, therefore, of merely being tolerated, it becomes a real part of the program. Consequently, the audience is better pleased with the performance which it is attending and is more likely

<sup>3</sup> Cf. *Motion Pictures* by Howard T. Lewis, Volume 8, *Harvard Business Reports*, p. 435.



to look forward with keen anticipation to the coming attractions to which its attention has been directed.

The second major consideration relates to the policy of a motion picture producer such as Warner Brothers in undertaking to produce and distribute its own trailers. There are several potent arguments against the general adoption of such a policy. First, the larger trailer companies have had long experience in the trailer business. Secondly, at least one of these trailer companies has apparently been successful, its sales having grown steadily. Again, a general motion picture producer may fail to give the same attention to the quality and service of a trailer business as does a trailer company, whose entire experience and income is involved with this one type of product. Finally, as has been indicated, earlier in the development of the industry at least, motion picture companies had produced their own trailers and had given up the practice, apparently because of increasing pressure from exhibitors who sought to obtain trailer service gratis. All these arguments have real weight.

For such companies as Warner Bros. Pictures, Inc., however, it seems that these conditions should not prevail. For one thing, there is no inherent reason that the advertising department of this company should not give just as serious and as intelligent attention to the production of effective trailers as should any independent company. In fact, since the scenarists, casts, and directors are all under the company's immediate control, trailers of really superior quality should be more probable, particularly if fashioned along the lines indicated in this discussion. Again, the cost of distribution should be less. Companies like Warner Bros. Pictures, Inc., have a completely organized and functioning distributive organization, including distribution centers, salesmen, and bookers, presumably rendering satisfactory service to the exhibitor. In the case of the national trailer companies the entire organization functions from three or, at the most, four exchanges, whereas a large motion picture distributor has about thirty. It must be recalled, moreover,

that with a trailer company the trailer business is compelled to bear the entire cost, whereas with a motion picture company the cost can be borne jointly by trailers and other films. This fact is of significance even though the trailer business of the trailer company is substantially larger in total than the volume of the trailer business of the picture producer.

The pressure for free trailer service was less severe in 1929 than it had been originally. In the theaters owned by Warner Bros. Pictures, Inc., obviously no question would arise. In fact, since the company had been charged for the trailers of its pictures, some actual saving might result. With other theaters, even by 1929, the conditions had changed with the more general use of percentage pricing. In some cases, provision had been made for free service on all trailers to exhibitors who, buying on a percentage arrangement, agreed also to use the entire production of that producer. There was apparently a trend in the same direction on all trailers for pictures sold on a percentage basis. Producers were adopting this policy on the theory that such trailers furnished real advertising for the pictures in which both distributor and exhibitor were financially interested. From the distributor's viewpoint, moreover, the policy offered an opportunity for bargaining which he was not loath to utilize. Such opportunities did not exist when the trailers were sold by individual trailer companies.

Recognizing the closeness of the interests of distributors and exhibitors in this matter of advertising, several attempts have been made to develop cooperative advertising. At times this has been confined to groups of pictures which in the opinion of the distributor are of special value. Such pictures may really be worth substantially more than the average program picture and yet, since the exhibitor does a very ordinary job in advertising, such groups of pictures have not achieved the results which the distributor believed that they should have and which in fact they did achieve in other sections. Such groups of pictures are as a rule not sold until after the key-city engagements have been placed. Thus the

distributor is often dependent upon the key-city exhibitor for the successful selling of a picture in the territory to subsequent-run theaters. In fact, the contract drafted at the 5-5-5 conferences provides that the exhibitor may stipulate in his schedule that the playing of a picture by a prior run shall be the condition of his exhibition of the picture, in order that he may get the benefit of the publicity given the film on the prior run. The distributor has felt, therefore, that he should have direct control of the sale of his pictures to the public. An illustration of the importance of well-planned advertising in helping to make a picture successful is to be found in the treatment of pictures shown on Broadway. Here, many a film has been a success largely because of the carefully prepared advertising and exploitation campaign which has been given it. Some pictures, of course, are successes because they are good pictures, and these films, when shown in the rest of the country, are likely to succeed on their own merits there, as well as on Broadway. Many other films, however, are of mediocre or poor quality, and still are successful on Broadway; in these cases the success is due largely to the exploitation which the pictures receive. When exhibited in the rest of the country, without the advantage of elaborate advertising, these films are likely to fail in most communities. Given the advantage of the exploitation used in the key cities, however, they might succeed to a certain extent. Therefore, since the success of a picture in subsequent runs depends so much upon the success of the engagement in key cities, it would seem logical to suggest that a cooperative advertising arrangement be developed between the exhibitor and distributor, costs being shared jointly by the two.

This logic would seem to be all the more convincing where pictures are sold on a percentage basis. Here the distributor has a direct, immediate, and continuing interest in the success attendant upon the exhibition of a picture. Nothing would appear more logical, therefore, than that he should have a part to play both in directing and in financing the advertising connected with it. Percentage pricing may or

may not be entirely satisfactory,<sup>4</sup> but this is somewhat beside the point. Where pictures are sold on a percentage basis and the distributor is directly interested, it would seem as though the cooperative policy might well be continued somewhat further.

Other companies have undertaken cooperative exhibitor advertising for only their ordinary pictures. While recognizing the need for more effective local advertising and while appreciating that he should have a particular interest in pictures sold on the percentage basis, the distributor has also seen numerous difficulties to be encountered from his decision to enter into cooperative advertising with exhibitors. In the first place, such a policy would require the advertisement of specific pictures, the results of which would be entirely transitory. Thus, although the company might advertise a given picture heavily in a certain city, the results could be noted only during the period in which that picture was being shown in that town. There could be no effective carry-over to other pictures.

Local cooperative advertising would entail large expenditures by the distributor. Not only is the cost of the space used high, but the administrative costs of such a program in a large number of cities often might be out of proportion to the results achieved. It is likewise true that a company advertising locally would be spending considerable money in establishing the names of theaters in which it was only indirectly interested.

Another objection to cooperative exhibitor advertising concerns the extent to which the better class of theaters throughout the United States have been absorbed by the large chains. In 1930, it was estimated that over 4,000 theaters, the combined box office receipts of which were more than 50% of those of the entire American industry, were being operated by the five major chains. Although such theaters were users of distributors' advertising helps, some of

<sup>4</sup> See pp. 189-200.



them preferred to write their own copy, to prepare lithographs, and to vary the amount of space to suit their local needs. The tendency in 1930 was toward a further development of this preference. Such a practice was objectionable because in many cases it did not fulfill the needs for more strict adherence to the principles of good showmanship and respect for moral considerations, which requirements, many believed, could be met by a centralized advertising department. It was thought, moreover, that such a department could be more economically operated and would be better equipped than the theater circuits to prepare effective advertisements, especially those including pictorial lithographs of stars. The tendency toward advertising by circuit theaters was offset, to a certain extent, by the fact that several large distributors controlling theaters had already decided upon or were contemplating the adoption of cooperative advertising campaigns. Thus it was probable that, in the near future, chains booking the product of competing distributors would consider provisions for cooperative advertising a necessary adjunct to each sales contract.

Finally, even though a company deemed cooperative advertising advisable, it might experience difficulties in convincing independent exhibitors of that fact. In the first place, the average independent exhibitor was rather reluctant to invest in new ideas, especially in a plan that might reflect benefit without charge to subsequent-run houses in which he was not interested. Secondly, as a rule, such exhibitors were thoroughly convinced of their own capabilities. Lastly, because of the recent widespread expansion by the large theater chains, the independent exhibitor had become suspicious of distributor-exhibitor cooperative plans.

An experience of RKO Productions, Incorporated, in 1930 may illustrate the situation somewhat more concretely. In this case a definite program of cooperative consumer advertising was developed. The plan as it was worked out was not intended to conflict in any way with or to decrease the use of other exhibitor efforts. The aim was rather to

develop a program which would be coordinated with such efforts and increase the effectiveness of each campaign.

It was planned that during the initial stages cooperative advertising would be confined to the so-called Radio special pictures known as "Titans", and even then would be used only when these films, adjudged on the basis of preview showings, had proved to be of such quality that the company could conscientiously expect additional returns as a result of the increased advertising. Coordination with the regular advertising would be effected automatically. All copy, art work, and typography would be prepared by an advertising agency in cooperation with the company's home-office advertising department. To facilitate preparation the studio from time to time would supply "stills" from the pictures to be advertised, as well as other items of interest about the pictures. Since it was necessary to prepare the campaign before the release of the pictures involved, copy writers seldom would have an opportunity to view the pictures before writing the advertisements. In exceptional cases, such as one involving an average program picture which upon completion of production gave promise of outstanding box office success, preview showings would be run for the benefit of the advertising department.

The advertisements in general were to be large, sensational, and interesting, tending toward the type of exaggeration so common in the motion picture industry. Three advertisements of 800, 1,000, and 1,200 lines would be prepared for each picture. RKO Productions, Incorporated, would assume the cost, which approximated \$900 per picture, of preparing the advertisements and mats and of mailing the latter to the newspapers. The company preferred to assume these costs rather than to share them with exhibitors and thereby engender possible ill will.

The amount of money to be spent in each local campaign was determined by the exhibitor, who also exercised selection of the advertisements to be used. Despite the exhibitor's final authority on these matters, the company expected ap-

appropriations ranging from 3% to 5% of average gross receipts received by the theater on pictures of comparable exhibiting value. The exact percentage was dependent upon the amount estimated to be necessary for the success of a campaign locally. The company did not plan to establish definite budgets to govern its expenditures for cooperative advertising, but preferred to follow a flexible policy under which each case could be judged on the basis of local conditions. The appropriation for cooperative advertising would not affect the company's general advertising budgets.

The cost of the campaign was to be shared by the company and the exhibitor on the same ratio as that used for participation in box office receipts. In cases where the percentage division applied after overhead charges had been deducted, the company required exhibitors to continue with their regular advertising. This was justified on the grounds that the amount ordinarily spent by the exhibitor for advertising was included in the overhead charges and, therefore, became a factor in determining the percentage division.

Selection of exhibitors with whom the company would cooperate was largely the responsibility of the company's exchange managers. They and their salesmen were instructed to select those theaters which they believed would be interested in the proposal and whose business they thought would yield a sufficiently high return to warrant the use of the plan. In general, the campaign was limited to first-run theaters located in key centers using percentage contracts. Selected names were referred to the head office where they were approved or rejected. No effort was made to conceal the plan from other theaters and theaters not approved by the home office. In presenting product to the selected exhibitors, the salesmen endeavored also to convince them of the merits of the cooperative plan. Those exhibitors who agreed to the plan signed a rider, describing the type of advertising and the method of dividing the cost, which was attached to the regular contract. The salesmen then had the exhibitor fill out a requisition.

When the requisition was received by the agency, it was filled out in quintuplicate, one copy each for the exchange, the exhibitor, the home-office advertising department, and two copies for the agency. The agency, upon receipt of the requisition, negotiated and entered into contracts with newspapers and sent mats of the advertisements to the newspapers.

When a cooperating exhibitor had been assigned play dates for a picture to which the agreement applied, he notified the advertising agency to that effect. The company's booking department, to provide a double check, also notified the agency. The latter in turn forwarded the mats to the newspapers with instructions regarding dates and location in the paper. The agency sent proofs to the exhibitors in order that the latter might arrange for the proper insertion of the theater name and of other attractions which were to be presented with the picture. Space for additional attractions was limited. As a general rule, the advertisements were scheduled to appear during the week immediately preceding the date set for the picture's initial showing. Although the company recognized the additional value to be gained from "run of the paper" positions, because of the expense involved it usually placed its cooperative advertisements on the amusement page.

Selection of newspapers was determined largely by the exhibitor, who, after having agreed to cooperate, notified the agency of his first, second, and third choice of papers and the rates which he had paid for advertising in each. The agency usually purchased space in the exhibitor's first choice. In the payment of newspaper fees, RKO Productions, Incorporated, assumed obligation for its share only. The agency was responsible for the exhibitor's portion. The company, however, through its exchanges agreed to take charge of the routine of collecting the exhibitor's share and to forward it direct to the agency. The company's share was paid to the agency by the home office in New York.

Special reports were not used after the campaign. The



only check was provided through the exchange's regular reports on box office receipts by individual theaters.

The success of any plan of cooperative advertising is obviously dependent upon two things. One is the existence of exhibitor interest. The attempt on the part of the distributor to arouse interest on the part of exhibitors in advertising planned by the distributor does not always meet with the most enthusiastic response and it is often likely to prove a difficult task to sell the exhibitor on such a plan. It is even more difficult if the members of the salesforce representing the distributor, being unconvinced of the desirability of the plan, are lacking in enthusiasm for it.

A second requisite is the selection of an advertising agency, if an outside agency be used, which actually can give advisory assistance in promoting the plan. Unfortunately some advertising agencies seem to lack any real comprehensive knowledge of the motion picture industry and of its problems. Obviously, results attained under the direction of such organizations are not likely to be very fruitful. Furthermore, whoever is responsible for the supervision of the plan in operation must have a sympathetic understanding of the exhibitor's problems, of his point of view, and of his peculiar situation.

No discussion of the problem of advertising would be complete without some consideration of the so-called advertising code of ethics. In June, 1930, the advertising and publicity directors of 19 major motion picture companies, at the instigation of the Motion Picture Producers and Distributors of America, Incorporated, adopted a code of advertising ethics. This code, which replaced a similar, less inclusive document, was instituted as a means of furthering self-government in the industry.

The code for motion picture advertising was devised shortly after the industry had ratified a new production code to govern the ethical requirements in screen entertainment. Although the advertising code was allegedly created to meet the new conditions brought about by the universal

acceptance of talking pictures, many believed that its actual purpose was to prevent any further increase in public antagonism toward the industry, particularly opposition which had taken form in demands for legalized censorship.

Motion picture advertising had become a target for the advocates of censorship, principally because of the use of flagrant posters, lobby displays, newspaper cuts, etc. In an effort to produce results, motion picture companies had devised advertisements that were somewhat sensational in character. In many cases advertisements were illustrative of the pictures being exploited. More often, however, they represented gross exaggeration and, in some instances, outright untruths. In addition, advertisements often cast aspersions on the law, ridiculed historical institutions, and had a tendency toward vulgarity.

To correct these conditions, and at the same time avert further demands for censorship, the following code was adopted:

The provisions of the code shall apply to press books, annual announcements of product, trade and newspaper advertisements, trailers, outdoor display, novelties, and all other forms of motion picture exploitation.

1. We subscribe to the Code of Business Ethics of the International Advertising Association, based on truth and integrity.

2. Good taste shall be the guiding rule of motion picture advertising.

3. Illustrations and text in advertising shall faithfully represent the pictures themselves.

4. No false or misleading statements shall be used directly or implied by type of arrangements or by distorted quotations.

5. No text illustration shall ridicule or tend to ridicule any religion or religious faith; no illustration of character in clerical garb shall be shown in any but a respectful manner.

6. The historical institutions and nationals of all countries shall be represented with fairness.

7. Profanity and vulgarity shall be avoided.

8. Pictorial and copy treatment of officers of the law shall not be of such a nature as to undermine their authority.

9. Specific details of crime inciting imitation shall not be used.

10. The motion picture advertisers shall bear in mind the provision

of the production code that the use of liquor in American life shall be restricted to the necessities of characterization and plot.

11. Nudity, with meretricious purpose and salacious postures, shall not be used.

12. Court actions relating to censorship of pictures or other censorship disputes are not to be capitalized in advertising.

The agreement stipulates that in the event of transgression, the International Motion Picture Advertising Association shall call the attention of the advertising and publicity director of the offending company to the infraction of the code. If he does not agree with the association's viewpoint, he may present his case to a committee of three duly authorized members. If they object to this stand, he may appeal further to three directors of the association, whose authority is final. No time limit has been determined for the various steps in this procedure. The Motion Picture Producers and Distributors of America is not directly connected with the enforcement of the code; it is in a position, however, to exert a limited amount of pressure on offending members.

The code provides also that advertising directors, when confronted with a possible infraction of the rules in drafting a campaign, shall confer with the association; that press books and all advertising accessories shall be sent to it immediately upon completion; that each advertising and publicity director shall assume full responsibility for the advertising matter prepared by his company; and that use of copy shall be discontinued in case of a violation of the rules of the code.

Opinion in the trade on the probability of the success of the code has been divided. Some of those who were in favor of its adoption contended that it would elevate the standards of the industry and would minimize agitation for censorship, which was caused in many cases by off-color advertising of really worthwhile pictures. Others believed that it would create greater public confidence, especially among women, and would in turn stimulate permanent and desirable busi-

ness which was derived primarily from families that were attracted by decent and repelled by indecent entertainment.

On the other hand, the code has been opposed by some because it was impressed upon and not originated by the advertising men. Others have held that neither the advertising men nor their superiors, the executives in charge of distribution, take the code seriously. They believe further that, even though the advertising men may be favorably disposed toward the code, the code is meaningless without sponsorship by the chief distribution executives, who often dictate the types of advertisements to be used. Certain adversaries contend that the lack of any definite time limit on the procedure for enforcement enables distributors and exhibitors to make full use of censorable material before judgment can be rendered. Those in favor of the code recognize this deficiency but aver that the censorship of campaign press books and other advertising material in advance of their distribution is neither practical nor feasible. Finally, it is argued that enforcement, even if possible, may adversely affect the theater business. Those who hold this opinion believe that the industry is paying entirely too much attention to reformers and that, if the theater cannot use advertising which arouses curiosity and imagination, exploitation may as well be restricted to the name of a picture and of the theater at which it is being shown.

Probably the most that can be said for this attempt is that, as in the case of most attempts to establish codes of ethics, there will always be companies which will cooperate to the utmost and there will always be others which by one device or another will find a means of evading it. These codes are of value in formulating ideals; they probably mark a step of progress. Experience in the motion picture industry, however, has not differed from that in other fields, and the least that can be said is that there have been distributors who, if they have not actually transgressed the code, have come so close to the borderline that the ordinary individual cannot see the distinction.



## CHAPTER IX

### ARBITRATION

SETTLEMENT of trade disputes by arbitration rather than through a resort to the courts is a practice well established in many fields of commercial enterprise. It is to be expected that such disputes will be most numerous in an industry that is comparatively new and particularly in one in which the changes have been as rapid and as far reaching as they have been in the motion picture industry. Certain it is that until 1922 disputes were both many and costly. Exhibition contracts used by one distributor differed from those used by another. Not infrequently the contracts used by the same distributor varied. Consequently, every exhibitor was compelled to examine each specific contract in order to learn its terms.

Thus one of the most troublesome clauses in an exhibition contract is that which deals with the selection of play dates. An exhibitor might have contracts with eight or ten different distributors and would find it necessary to examine each contract separately as soon as a picture under it became available. The average exhibitor uses each year about 200 feature pictures and perhaps 350 short subjects. Since no one distributor today releases more than 75 pictures a year altogether, this means in practice that there are between 500,000 and 750,000 contracts for the exhibition of pictures entered into annually between distributors, on the one hand, and the operators of some 22,000 theaters, on the other. Under these contracts there are perhaps 10 or 11 million deliveries of pictures each year from distributors to exhibitors. It must be obvious that this number of deliveries would

easily lead to innumerable difficulties. Some of these disputes have arisen through an honest difference of opinion concerning the terms of the contracts; others, as a result of unscrupulous practice on the part of one party or the other. Sometimes pictures delivered on open account were never paid for. Sometimes pictures were not returned promptly to the distributor after exhibition, thereby causing the distributor to lose the rental provided for under contract with the next exhibitor scheduled to exhibit them. Sometimes an exhibitor would show a picture at a theater not named in the contract, exhibiting it at two theaters, for example, when he had paid for the right of exhibition at only one. "Thirty-five to forty per cent of the total amount of rentals contracted for were never paid." <sup>1</sup>

Distributors naturally undertook to protect themselves. It became a common practice at the time of the signing of the contract, to demand of the exhibitor a large advance deposit amounting to 25 % or more of the aggregate rentals to be paid under the contract, such deposits being applicable on account of any sums due the distributor or on account of any damage caused by the exhibitor's breach of contract. Prior to 1922 the distributors held under these clauses over \$5,000,000 of the exhibitors' money paid in the form of advance deposits. The maintenance of this advance deposit system was obviously expensive for the exhibitor. It made him feel that he was financing the distributor unduly. Occasionally a distributor failed and the exhibitor lost his money. The situation became so bad that in several cases state legislatures enacted laws for the purpose of protecting these exhibitor deposits; such statutes, however, have not generally been very effective.

The contracts frequently authorized the distributor to terminate the contract or to withhold the delivery of any pictures, in the event that the exhibitor defaulted in the performance of any condition specified therein. There were

<sup>1</sup> *Answer of Paramount Famous Lasky Corporation et al., Defendants, to United States of America, Petitioner in Equity No. 45-100, p. 33.*

contracts which authorized the distributors to demand at any time additional cash payment. For instance, if there was a dispute concerning a play date or a damaged or lost print, the distributor might demand a cash payment, either withholding pictures or terminating the contract if it was not paid. Such clauses created hard feeling and led to much litigation, especially since the decision as to whether a part of the deposit should be withheld by the distributors or whether a cash payment should be demanded, or whether the delivery of pictures should be suspended or the contract terminated, always rested with the distributor.

In some cities the local managers of distributors' exchanges had organized what were known as F.I.L.M. Clubs. These clubs constituted an agency through which the exchanges pooled their information concerning the credit standing and business practices of their customers. When it had been proved that an exhibitor was addicted to "questionable" business practice, all the members of the local F.I.L.M. Club refused to do business with him. In some cities these clubs requested exhibitors to appear before a board of three of their members to defend themselves. The Northwest Theater Owners Association, for example, had a plan of arbitration which had been operative in Minneapolis for some years.

This situation could not continue indefinitely. In the spring of 1922 the Motion Picture Producers and Distributors of America, Incorporated,<sup>2</sup> met with various representatives of exhibitor associations and adopted a Uniform Contract

<sup>2</sup> Before 1922 there had been at least two distinct attempts to organize producer-distributor interests. Both failed owing to lack of support, although in 1921 some 65% of the distributors were members of the second organization. On December 2, 1921, steps were taken which led to the formation of the Motion Picture Producers and Distributors of America, Incorporated. (See *Year Book of Arbitration*, 1927, p. 605.) The organization consisted in 1928 of 28 members, including most but not all of the well-known producer-distributors. According to the Department of Justice the interests represented in the association controlled 60% of all the motion pictures distributed annually in the United States; together with 77 regional distributors, who were members of the Film Boards of Trade, these interests "controlled 98% of all the motion pictures distributed each year in the United States."

which became effective in April, 1923. In this contract was a clause which required that in the event of a dispute, both parties to the agreement, before they resorted to any court to determine their rights thereunder, should submit such controversy to a Board of Arbitration, and that they should comply with the decision of such Board of Arbitration. They further agreed that such decision should be enforceable in any court of competent jurisdiction; that they would waive the right of trial by jury on any issue arising under the contract; and finally that they would accept as conclusive the findings of fact made by such board.<sup>3</sup> It therefore became incumbent upon each exhibitor, when he signed a contract, to agree at the same time to the form of arbitration specified in this Uniform Contract.

As might be expected, experience indicated that certain changes were desirable, with the result that in 1925 and early in 1926 conferences between distributors and exhibitors were held for the purpose of improving the Uniform Contract. On February 6, 1926, the Standard Exhibition Contract was agreed upon, together with rules and regulations relative to arbitration. It went into effect on March 1, 1926, and became the commonly accepted form of contract.<sup>4</sup>

In September, 1927, conditions still being unsatisfactory, the Federal Trade Commission suggested a trade-practice conference. Exhibitors from each of the 32 zones and not affiliated with any producer-distributor were invited to elect

<sup>3</sup> These provisions have not been substantially changed since that time. The modifications that have been made have been important but not fundamentally so. This Uniform Contract was used by practically all distributors though not in exactly the original form. Not infrequently distributors added clauses of their own.

<sup>4</sup> At the conclusion of the conference in February an Advisory Committee was appointed to complete the work that had been undertaken. This Committee consisted of the president of the Motion Picture Theater Owners of America, president of the Theater Owners Chamber of Commerce, president of the Motion Picture Owners of the Northwest, and E. V. Richards, an exhibitor operating a large number of theaters in the South and not a member of any association. As a result of the work of this committee, the distributors withdrew certain conflicting clauses and in December, 1926, the committee adopted substitute rules and regulations relative to arbitration.



or appoint two delegates, neither of whom should be an affiliated exhibitor. Practically all the producer-distributors were also represented.<sup>5</sup> The conference, which was held in New York City, October 10-15, voted, with but one dissenting ballot, to support arbitration. A Contract Committee of nine was appointed,<sup>6</sup> which met in Chicago in January and February, 1928, and agreed upon a New Standard Exhibition Contract. It further agreed that Rules of Arbitration should not be amended thereafter without the approval of the Contract Committee. This new contract became effective May 1, 1928.<sup>7</sup>

Before proceeding to analyze the arbitration under this contract, it is necessary to have clearly in mind the organization under which it functioned. There were 32 Film Boards of Trade organized in as many cities in the United States under the auspices of the Motion Picture Producers and Distributors of America, Incorporated. There were also six such boards in Canada, one in Havana, and one in Mexico

<sup>5</sup> There were present at the conference 43 producer delegates, 25 distributor delegates in person and others represented by proxy, 66 unaffiliated exhibitors, and 59 affiliated exhibitors.

<sup>6</sup> The committee consisted of three producer-distributor delegates, three affiliated exhibitor delegates, having no right to vote, and three unaffiliated delegates.

<sup>7</sup> The arbitration article in the three contracts—namely, the Uniform Contract of April, 1923, the Standard Exhibition Contract of March 1, 1926, and the New Standard Exhibition Contract of May, 1928—was practically the same. The first Standard Exhibition Contract eliminated the minimum penalty which might be imposed upon exhibitors; otherwise the arbitration clause remained identical. The New Standard Exhibition Contract made no change except that it provided for filing with the American Arbitration Association and the addition of a provision that fixed definitely the time within which a distributor must comply with an award against an exhibitor. This time limit was determined according to the location of each Board of Arbitration—thus, in New York City it is seven days; in San Francisco, 30 days; in Boston, 10 days; and in Minnesota, 20 days. There were, of course, numerous other changes in the contract itself which indirectly affected the problem of arbitration. The official legal status of the Film Boards was established in August, 1926, when the United States Department of Justice, following an exhaustive investigation, declared that the operation of the board was legal except for a few certain practices not isolated here. This probe started in February, 1925, when the M. P. T. O. A. at its Milwaukee convention flayed the workings of the boards declaring them illegal. (From *Film Daily Year Book*, 1928, p. 759.)

City. The organization of these boards was much as it is today. They are not incorporated, they are local in character, and they are governed only by such rules as they themselves adopt. Membership in them is composed largely of the managers of the local exchanges of the various national distributors. Representatives of local distributors are asked to join and in many cases do join. These Film Boards of Trade<sup>8</sup> were organized for the purpose of representing the distributors in all matters of common interest in their respective local communities. Their functions by no means have been confined to arbitration. Until late in 1930, one of the duties of each board was to appoint what was known as a Credit Committee whose function it was to report to the Film Board upon the credit standing of the new proprietor of any theater whose ownership had changed hands.<sup>9</sup> At the time these local boards were organized, there was also created in New York a head office of the Film Boards of Trade for the purpose of supervising the operations of all the boards; it arranges with the home offices of the national distributors represented in the membership for the payment of the cost of their operations;<sup>10</sup> it extends such advisory assistance, particularly as to legal matters, as may be requested; and it recommends the appointment of a secretary

<sup>8</sup> The Film Board history is said to date back to 1912, when a board was formed in Denver.

<sup>9</sup> The legality of the Credit Committees was attacked by the Department of Justice as being a means of a conspiracy in restraint of trade. The case was heard in the United States District Court of the Southern District of New York, which handed down an opinion declaring the Credit Committees and their rules to be legal under the Sherman Anti-Trust Act. The United States Supreme Court reversed this decision, November 24, 1930, declaring the credit system illegal. Following this decision the Credit Committees were abandoned.

<sup>10</sup> At the beginning of each year each Film Board of Trade sends into the head office an estimate of expenses for that year. To the total of these local expenses is added the cost of operating the central office. The final figure is then apportioned among the producer-distributor members. Dues to be paid by the local distributors' companies are arranged in conference with them. These dues, however, are never very large. The dues of a company represented on every Film Board of Trade in the United States might, for example, be \$35,000 while those for a local distributor might not be in excess of \$50.

for each board. Each secretary is directly responsible to this head office for the proper operations of the board.

As has been indicated, one of the functions of these various local Film Boards of Trade was to select the distributor representatives for the local Arbitration Board. The exhibitor members on these Arbitration Boards were usually chosen by the local exhibitor associations.<sup>11</sup> These Boards of Arbitration consisted of six persons, three of whom were members of the Film Boards of Trade and three of whom were proprietors or managers of "theaters not owned or controlled by producers or distributors". The term of office of the arbitrators was for one month<sup>12</sup> or until their successors were appointed. In cases where the six arbitrators could not reach a decision, a seventh arbitrator, not connected with the motion picture industry nor in any way interested in it, was called in. In 1928, out of 23,869 claims filed, a seventh arbitrator was necessary in only 28 cases. No member of the Board of Arbitration could act in any controversy in which he had an interest. The cost of maintenance was divided equally between the Film Boards of Trade and the local exhibitors' association. As a matter of fact, these costs were almost negligible. Generally either the secretary of the Film Board of Trade or the secretary of a local exhibitors' association performed all the clerical work.

The procedure in trials before these Film Boards of Trade was extremely informal. In a broad way it was governed by the rules and regulations, to which reference has already been made, and which may be considered a part of the arbitration clause of the Standard Exhibition Contract.<sup>13</sup>

<sup>11</sup> In the absence of a local exhibitors' association the president of the Film Board of Trade requested the president of the local Chamber of Commerce to appoint the exhibitor representatives. Failing here, the same request was made to the mayor or other chief executive of such city. If this also failed, then appeal was made to the president of the American Arbitration Association.

<sup>12</sup> In the Uniform Contract the term of office was for one year. This was changed to three months in the First Standard Exhibition Contract and reduced to one month in the New Standard Exhibition Contract.

<sup>13</sup> An interesting discussion concerning the character of trials in arbitration is to be found in the *Harvard Law Review*, May, 1927 (pp. 929-942),

In these trials the exhibitor was entitled to representation by attorney, should he so desire. In the event that he was unable to be present, he had the privilege of presenting a written statement and argument.

The question of penalties had particular significance. Speaking broadly the following provisions held. Should the exhibitor fail to submit to arbitration or to abide by any decision, each distributor might at his option demand as security for the performance of each such *existing* contract the payment of an additional sum not to exceed \$500 under each contract. This sum might be retained by the distributor until all such contracts were completely performed and then applied at the option of the distributor against any sums due for damage determined by the Board of Arbitration. The balance, if any, was to be returned to the exhibitor. In the event that the exhibitor failed to pay such additional sum within seven days after demand, the distributor might by written notice to the exhibitor suspend service until the sum was paid and/or terminate this contract. The security which might be demanded was not to exceed the actual value of any print plus the rental contracted for such print, nor in any case \$500. In case of the exhibitor's failure to pay security, the distributor was to "proceed to suspend service" until the decision had been complied with. If service was suspended for 10 days, the distributor might then cancel the contract. In case the distributor failed to comply with any award within the number of days specified, the exhibitor might at his option terminate any existing contract with the distributor. In addition, the distributor would not be entitled to redress from any Board of Arbitration on any claims

"Two Views of Commercial Arbitration" by Dr. Nathan Isaacs. Dr. Isaacs says in part: "The common element in these illustrations is that they demonstrate the point that a somewhat longer and freer use of arbitration in England—perhaps, too, nearness to Continental examples—has tended to bring about the adoption by the courts of a realistic point of view as to arbitration as distinct from the somewhat legalistic one prevalent in American courts that arbitration is, and should be, in every respect like court procedure except that the tribunal is chosen differently. It is perhaps too late to argue for the adoption of a more liberal view in American courts."



against any exhibitor until the distributor should have complied with such decision,<sup>14</sup> and there should be added to the amount of the award 10% thereof for each 30 days after the time for compliance therewith.<sup>15</sup>

In view of the controversy which arose over the operation of the arbitration system, it may be well to preface an evaluation of its success by a consideration of the reasons that arbitration is desirable in this industry. A little thought will doubtless make clear that there are several reasons for avoiding resort to the courts in the motion picture field if it be at all possible.

Each of 11,000,000 deliveries made annually is the delivery of a picture under a contract for exhibition which was entered into between the distributor and the exhibitor before the production of the picture or before its release date. With respect to each picture it is necessary to come to an agreement on the play date subsequent to the execution of the contract. . . . To each of these subsequent agreements all of the other provisions of the Standard Exhibition Contract apply, including, among others, the provisions relating to time and place of exhibition, payment of rental, "protection" and "run", delivery and return of prints, loss and damage to prints, description and titles of photoplays, exhibition and advertising, warranty as to advertising, delay in or prevention of performance, taxes, minimum admission charge, racial or religious matter, arbitration and waiver. . . .

Moreover, as each contract usually licenses the exhibition of from 20 to 60 pictures, to be released and exhibited at approximately regular intervals, an unsettled controversy relating to the delivery of one picture upsets the application of the contract to the other pictures specified in the contract. The mutual obligations of the parties in respect to the other pictures are usually dependent upon the decision of the controversy. What those obligations are cannot be determined until the liability in respect to the matter in controversy is fixed.

Delay in the determination of the dispute is costly to distributor and exhibitor alike. Even if the distributor loses the controversy a prompt decision may enable him to relicense the film at a theater in another place, but if the adverse decision is delayed the distributor loses that possibility because the rental value of a stale picture is negligible. On the other hand, a tardy decision against the exhibitor

<sup>14</sup> Taken from Article 18.

<sup>15</sup> Taken from Rules of Arbitration.

forces the exhibitor to take and pay for a picture which has no longer any drawing power in his theater and which will be practically a total loss, since the exhibition of an out-of-date picture is likely to impair the reputation of his theater. If the decision is prompt, even though against him, the exhibitor may take and exhibit the picture while it still has value and drawing power.

The distribution of motion pictures is a complicated industry and *sui generis*. . . . It deals with licenses and license fees. The distributor grants the exhibitor the right to use the property of the distributor for a limited time. A particular exhibitor acquires only the use of the property for one day or a few days at a specified place. Moreover, other exhibitors acquire rights of use in the identical property, the rights of some being prior, known in the trade as "first run", and the rights of others being subsequent to the use of a particular exhibitor, being known in the trade as "second" or "subsequent" runs. A breach by either the distributor or the exhibitor of the contract between them often affects another exhibitor. Tardiness or negligence in specifying a play date may delay the subsequent runs of the picture at other theaters and thus lead to controversies between the distributor and the operators of such other theaters. Prompt determination of this particular kind of controversy is of the utmost importance.<sup>16</sup>

How successful was this experiment in commercial arbitration? Judging from the statistics alone, very commendable results were obtained. Will Hays has said that in his judgment the arbitration system reached its maximum usefulness in 1928. "During the year, 23,869 controversies involving \$6,503,474.75 arose between exhibitors and distributors. Fifty-two per cent of these claims were settled between the time of filing and date of hearing by arbitration boards. Only 28 claims of this vast number required a seventh arbitrator, and not a single claim was litigated before arbitration. In the five years since the institution of this arbitration system, 75,409 controversies involving \$18,241,353.29 have been disposed of." Exhibits 30, 31 and 32 <sup>17</sup> indicate somewhat more in detail the work done.

<sup>16</sup> See pp. 24-27 of the *Answer* by the defendants to the Petition in Equity No. 45-100 cited above.

<sup>17</sup> Reprinted from *Harvard Business Review*, October 1929, supplement, "Arbitration in the Motion Picture Industry," by Howard T. Lewis.

## EXHIBIT 30

## SUMMARY OF REPORT OF BOARDS OF ARBITRATION IN THE UNITED STATES FOR 1928, 1927, 1926, 1925, 1924

Years	Claims Filed	Amount	Claims Filed but Settled or Withdrawn before Date of Hearing	Amount	Awards Made	Amount	(a) Claims Dismissed	Amount
1928	23,869 (b)	\$6,503,474.75 (c)	12,201 (d)	\$2,421,669.73	7,304 (e)	\$2,829,518.85	629	\$306,072.43
1927	15,890	4,363,216.36	7,039	1,926,193.36	6,442	1,720,421.96	426	150,331.35
1926	12,566	2,712,495.22	5,830	1,121,170.95	5,476	1,356,233.78	440	117,446.74
1925	11,887	2,542,544.40	4,823	927,544.92	5,450	1,351,206.72	292	87,147.86
1924	11,197	2,119,622.56	6,029	1,003,151.22	4,875	1,077,968.99	293	38,502.35

Years	Claims Pending at End of Year	Amount	Court Proceedings before Submission to Arbitration	Amount	Court Proceedings after Submission to Arbitration	Amount	Claims Requiring Seventh Arbitrator	Amount
1928	1,355	\$401,752.84	0	.....	134 (f)	\$131,133.27	28	\$24,966.31
1927	1,095	414,115.30	5	\$878.72	62	48,344.55	36	20,753.71
1926	1,007	300,959.98	1	80.50	71	84,659.38	25	16,607.68
1925	539	205,216.71	1	.....	17	.....	22	.....
1924	520	140,234.00	1	.....	4	.....	15	.....

(a) For want of jurisdiction, lack of evidence, etc.

(b) 22,878 filed by Distributors; 991 filed by Exhibitors.

(c) \$6,122,269 of Distributor claims; \$381,205 of Exhibitor claims.

(d) 51% of all claims filed.

(e) 11.4% of awards were against Distributors; 88.6% were against Exhibitors.

(f) Including: 125 Claims involving \$104,928.77 for entry of judgments upon awards rendered.

7 Injunctions involving \$19,943.00 (by Exhibitors) to restrain Distributors from enforcing awards (Buffalo and Pittsburgh).

2 Motions to Compel Arbitration (under New York Arbitration Statute) involving \$6,261.50.

All tables compiled from data furnished by Motion Picture Producers and Distributors of America, Incorporated.

EXHIBIT 31  
BASES OF CLAIMS FILED BY DISTRIBUTORS\*  
1928  
[United States only]

	For Breach of Contract for Not Exhibiting Pictures	For Returned Checks	For Pictures Unpaid for Delivered Open A/C	Late Return of Print	Damaged Print	Lost Print	Violation of Copyright Law		Declaratory Award		To Exclude because of Racial or Religious Subject-Matter	To Obtain Percentage of Box Office Statements	Other Claims Filed
							Switching	Bi-cycling	Validity of Contract	Interpretation of Contract			
Number of Cases...	81.7	3.0	7.2	0.6	1.7	0.41	0.06	0.8	0.7	0.08	0.009	2.9	0.84
Amount.....	90.6	0.95	3.9	0.13	0.6	0.09	0.008	0.88	0.98	0.2	0.005	0.15	1.5

\* In percentage of total number of claims and of total amounts filed by distributors.

EXHIBIT 32  
BASES OF CLAIMS FILED BY EXHIBITORS\*  
1928  
[United States only]

	Failure to Deliver Pictures (Miss-outs)	Violation of Protection or "Run" Clause	Failure to Designate Play Dates	Change of Title, Star or Director	Declaratory Award		To Exclude because of Racial or Religious Subject-Matter	To Exclude 10% of Total Number of Pictures Purchased	Other Claims Filed
					Validity of Contract	Interpretation of Contract			
Number of Cases.....	38.5	18.2	7.5	1.7	5.3	2.5	0.1	None	26.2
Amount.....	10.2	26.84	5.7	0.75	12.0	4.3	0.009	None	40.2

\* In percentage of total number of claims and of total amounts filed by exhibitors.



In spite of this formidable record of apparent success, a certain amount of decided criticism existed. This dissatisfaction found concrete, tangible evidence in the government suit to which reference already has been made. In some cases there was a downright refusal to participate in the arbitration proceedings—for example, the Northwest Theater Owners Association declined at one time to permit its members to sit on cases involving certain distributors until adjustments had been made. In Cleveland, exhibitor members refused to act unless defendant was present. In Michigan there was a temporary withdrawal by exhibitors following a refusal on their part to accept an award made for a certain distributor. One trade paper<sup>18</sup> said: "The system of arbitration now in force in the motion picture industry is so lopsided, so unfair, that it is incomprehensible why you should have tolerated it at all." A circular letter, dated June 28, 1928, and sent to the members of the Unaffiliated Independent Motion Picture Exhibitors of America from the office of F. J. Rembusch, the national secretary of that organization, contained the following statement: "When our system of compulsory arbitration was suggested five years ago, I branded it as dishonest. . . . It has taken about four years for the rest of the exhibitors to find out that compulsory arbitration and trustification are one and the same thing." Judge Josiah Cohen of Pittsburgh is reported to have rendered a decision in which he said:<sup>19</sup> "So far as arbitration is concerned, there is a provision for arbitration, but what has the exhibitor to do with that? He does not have any choice in the selection of the arbitrators at all. The arbitration arrangement . . . is made by a representative of the exhibitors and distributors . . . and they arranged these clauses in the contract. Moreover all this is for the protection of the distributor as far as I can see." In July, 1929, the Allied States Association, a national organization representing independent exhibitors, voted to

<sup>18</sup> *Harrison's Reports*, December 15, 1928.

<sup>19</sup> Quoted in *Film Daily*, July 12, 1928.

withdraw entirely from all arbitration proceedings until the distributors had made certain concessions. Friends of arbitration were also said to be very gravely concerned because certain important distributors, particularly Warner Brothers and Fox, were alleged not to be using the Standard Exhibition Contract exclusively. Since generally speaking the arbitration clause was contained only in the Standard Exhibition Contract, the significance of any wide extension of such procedure can scarcely be overestimated.

Attacks on compulsory arbitration may be grouped into three main classes. First, there was that of the Department of Justice which maintained that "The Plan (including in this term the Standard Exhibition Contract, the Arbitration Laws, and the Rules of Arbitration) constituted an unreasonable restraint of trade" in that it placed "an unreasonable obstruction in the way of the normal carrying on of interstate commerce in films".<sup>20</sup> Second, the machinery which had been set up for the operation of the plan for compulsory arbitration was inadequate and unsatisfactory. Third, prejudice against the interests of the independent exhibitors was inherent in any form of compulsory arbitration that had been suggested.

The attack by the Department of Justice centered around the first of these charges. Broadly put, the charges were that compulsory arbitration was part and parcel of the Standard Exhibition Contract, that no pictures were sold except under this contract, that interpretative rules were prepared and distributed by the defendants for governance of the local Film Boards of Trade, that these boards distributed in the United States approximately 98% of all

<sup>20</sup> See Reply Brief of United States in case of *U. S. of America v. Paramount Famous Lasky Corporation*, et al., in equity, No. 45-99.

Various other practices of the producers and distributors are under attack by the Department of Justice on essentially the same grounds. See the case of *Federal Trade Commission v. Famous Players-Lasky Corporation*, et al., involving block booking; *U. S. v. First National Pictures, Inc.*, et al., involving the Credit Committees of the Film Boards of Trade; and various cases involving protection, in particular, *U. S. v. West Coast Theaters, Inc.*, et al.

motion picture films distributed in this country, that these local Boards of Trade and the Boards of Arbitration "supplemented and exceeded" such instructions by various "understandings and agreements without the knowledge and against the general instructions of the defendant exhibitors and of the defendant associations",<sup>21</sup> and that the plan as a whole constituted a means of unduly restraining the interstate commerce in films.

More specifically, the argument of the government fell into three well-defined phases: first, that compulsory arbitration was forced upon the exhibitors against their will; second, that certain provisions of the Standard Exhibition Contract were in themselves unfair to the independent exhibitors; and, third, that in consequence the system was in contravention to the law. These three arguments may be considered in turn.

The first of these allegations stated that the Standard Exhibition Contract and compulsory arbitration were forced upon the exhibitors without their consent. A great deal of evidence was introduced in support of the charge that the Standard Exhibition Contract of March, 1926, for example, was never regularly approved by the exhibitors, but on the other hand was actually condemned by various organizations representing the independent exhibitors. It was largely in consequence of such exhibitors' discontent over that contract that the Federal Trade Commission initiated the Trade Practice Conference of 1927. The Department of Justice maintained that the exhibitors at that conference had no power to commit other exhibitors to any course of action whatsoever, nor was any "attempt made so to do".

<sup>21</sup> The government conceded that such agreements were entered into by the local Film Boards of Trade wholly of their own initiative. It would appear that such agreements were quite common at one time but that, subsequent to a conference at French Lick in June, 1927, between the general attorney for the Hays Organization and the distributor representatives on the Film Boards, they were abandoned. The Federal suit was brought on April 27, 1928, and the defendants contended that neither at that time nor at any subsequent time have such agreements existed. See Reply Memorandum for Defendants, pp. 35-39.

In short, the government asserted that "the record fails to disclose any approval of this contract by any organization of motion picture exhibitors in the United States".

A careful reading of the evidence in an attempt to form an unbiased judgment would tend to establish the fact that, although technically speaking these contracts were never approved in the sense in which the government used that term, that fact could not in itself be considered a serious objection to the continuance of compulsory arbitration. The testimony seemed to indicate that it was the exhibitors who in 1922-1923 suggested the arbitration clause. The following citation proves interesting in this connection.

Finally, the exhibitors were asked what they suggested as a substitute for the practice in the past of requiring exhibitors to put up deposits; and in response to that question they suggested an arbitration clause.

To that suggestion the question was asked, "Well, how can the distributors be protected, and how can the awards, if any, that are made by the arbitrators, be enforced?"

In response the exhibitors suggested that provision be made in the arbitration clause that, if an exhibitor having been found by a Board of Arbitration to have breached his contract or done anything in violation of his contract, or failed to comply with the direction in the award of the arbitrators, *then all distributors with whom he had contracts should be placed in the position of requiring security from him for the performance of his contracts; and they argued that that was simply a substitution for the then-existing system of requiring from all exhibitors advance deposits, and postponing the time of the requirement of putting up the deposit to the period when it would be determined that the exhibitor had breached the contract.*<sup>22</sup>

That the exhibitors did generally approve of compulsory arbitration may be fairly asserted. An impartial reading of the text of Resolution VI introduced at the Trade Practice Conference would seem to lead to this conclusion. Consideration of the conditions under which this conference was held would lead to the belief that it was as nearly representative as could be expected. Further, the impracticability

<sup>22</sup> Brief for Defendants, p. 33.



of submitting this contract to each and every exhibitor or to any national organization of exhibitors whose action would be accepted by exhibitors as fairly representing them must be considered. The willingness of the exhibitors to accept awards without resort to the seventh arbitrator lent some further weight to the argument of the defendants. Something, too, may be said for the contention that the continued use of this contract, even though it may have been only because "it was the best they could get", amounted to tacit acceptance, though obviously undue weight must not be attached to this argument. A certain amount of bargaining occurred at all the conferences,<sup>23</sup> and it was to be expected that the final result would be more or less of a compromise. All in all it would seem safe to conclude that, granting that the government was technically right in its contention, yet any attempt to judge the situation broadly and fairly would lead one to believe that the Standard Exhibition Contract and compulsory arbitration were adopted after exhibitors had had every reasonable opportunity to present their case and that the approval of a majority of independent exhibitors was in effect obtained.

The second argument of the government centered around certain clauses in the contract and in the Rules of Arbitration. The government asserted that this contract was "unilateral, unfair, and discriminatory in that most of the rights therein are and have been given to the distributors and most of the penalties and obligations therein are and have been

<sup>23</sup> The government made much of the fact that various resolutions were submitted, particularly during the session of the Contract Committee appointed following the Trade Practice Conference, which might be interpreted as opposing the contract. For example, there was a resolution introduced making arbitration voluntary. There were resolutions introduced practically eliminating the penalties to be inflicted where compulsory arbitration was not accepted. A resolution was also introduced proposing that the distributors should finance exhibitors' costs of arbitration. None of these resolutions was adopted. It would seem reasonable to assume that at least some of the other provisions were introduced by exhibitors merely as bargaining tactics. At a meeting of the Contract Committee held on October 4, 1928, a plan to assist the exhibitor organizations in financing their cost of arbitration was agreed upon.

imposed on the exhibitors". It was further asserted that the "rights given the distributors and all the obligations imposed upon the exhibitors have been very definite and explicit, while the principal rights of the exhibitors and most of the liabilities imposed upon distributors are indefinite and uncertain". And, finally, that "the so-called arbitration system in the motion picture industry primarily is a system for the collection under duress or threat of duress of debts due to distributors from exhibitors . . . . and that the system departs widely from the usual principles of commercial arbitration in that the procedure and the principles of law requisite to the decision are prescribed, and the enforcement of the decisions is controlled by the dominant factor in the industry, the distributors".<sup>24</sup>

Particular analysis was made of Articles 2, 3, 4, 8, and 19 of the 1928 contract.

Article 2 provided among other things that the photoplays designated in the contract schedule had to be exhibited "during the period of one year commencing with the date fixed or determined as hereinafter provided".<sup>25</sup> This provision was inserted presumably for the purpose of insuring to the distributor a reasonable promptness in compliance by the exhibitor with the contract schedule. In view of the general absence from the contract of specific play dates

<sup>24</sup> Government Brief, p. 50.

<sup>25</sup> The method of prescribing play dates under the contract was somewhat complicated. Very briefly the provisions were as follows. The distributors had to mail to the exhibitors fifteen-day advance notice of availability. The exhibitor within fourteen days thereafter was to select play dates falling within a thirty-day period from the availability of the film to him. If the dates so selected were not open to the exhibitor, one of two procedures was followed. First, the exhibitor was to select other dates within this period if any were open. If he failed to do so the distributor was to designate the dates, giving the exhibitor fourteen-day notice thereof. These dates had to be within not less than two or more than six weeks from the date first selected by the exhibitor. Second, if no dates were open within this period of time, the exhibitor was to select dates not less than two or more than six weeks after the thirty-day period. If none were so selected, then the distributor was to designate the dates within the same period on which the pictures should be shown. If for any reason the exhibitor at any time failed to designate dates within the time limit allotted him for such selection, the distributors were to name the play dates.

there would appear to be real danger of an indefinite prolongation of its life by an exhibitor seeking to avoid fulfilling it. This would be clearly undesirable from the distributor's point of view, even though the terms were eventually complied with in full.

This clause was interpreted by Gabriel L. Hess, general attorney for the Motion Picture Producers and Distributors of America, Incorporated, in part as follows:

Accordingly, the distributor should within a reasonable time after each picture is available for exhibition by the exhibitor give the exhibitor notice of availability, to the end that delivery of all the pictures contracted for may be made within the year period. If, by the acts of the exhibitor in failing to select dates as provided in the contract, or otherwise agreed upon with the distributor, the distributor is prevented from making deliveries within the year period, the distributor cannot be held to have breached the contract because of a failure to make deliveries within such period. . . .

Yet it was equally important to the exhibitor that he be insured promptness of availability, both in order that he might have free playing time for the new pictures the following season and in order that he might capitalize as largely as possible the timeliness of his current showings. The government, however, concluded that this article "clearly results in subsequent-run exhibitors frequently being *required to play pictures that are several years old, even if the delay is occasioned solely by the nonavailability of the pictures for the subsequent-run exhibitors*"<sup>26</sup> and is not at all due to the fault of the exhibitors". That such a situation might develop was nowhere denied by the defendants.<sup>27</sup>

<sup>26</sup> Writer's italics.

<sup>27</sup> In practice it not infrequently happened that an exhibitor did come to the end of the season with numerous unplayed pictures remaining on his schedule. Often, however, a distributor allowed him to trade out at least some of these "left-overs" on new pictures of the coming season. Strictly, the distributor was under no obligation to do so, but in the bargaining over the contract for the next year he actually did allow cancellation of unplayed old pictures on some basis, provided that new ones were substituted.

Article 3 was designed to prevent bicycling.<sup>28</sup> The government contended that under the Standard Exhibition Contract every exhibitor charged with bicycling must have the question of his violation of the United States Copyright Act heard and determined by a board, every member of which probably was prejudiced against him and every member of which might have a direct interest in the outcome of the matter. Every exhibitor who competed with a bicycler had a direct interest in removing his unfair competition. Every distributor who had contracts or might have contracts with a bicycler had a direct interest in preventing his unauthorized exhibition of pictures. This charge of general prejudice was supported by two types of evidence. First, at the Film Board of Trade Conference in June, 1927, Mr. Hess stated:

It is becoming more and more difficult, particularly in view of the fact that we are so active now in trying to run down bicyclers, to have distributor arbitrators who have no indirect interest in the matter that is presented to them for determination because when we find evidence of bicycling we generally find that practically every company is affected. . . . Necessarily if I am sitting as an arbitrator upon a claim made by Famous Players for bicycling its pictures, and I too have a claim against the same exhibitor, I have an indirect interest in the result of the controversy, and I am properly subject to challenge on the ground that I will be or will be presumed to be prejudiced.

Second, the danger of a biased award was further increased by virtue of the fact that the investigation of bicycling cases was authorized, financed, and directed by the Copyright Protection Bureau. This bureau was created by the national and regional distributors in 1926 as a result of an investigation made of those alleged violations on the part of exhibitors.<sup>29</sup> This control by the home office in bicycling

<sup>28</sup> The term "bicycling" is as old as the industry. It was "the practice of many an exhibitor to contract for a picture for one theater and then with his bicycle to ride it to another theater and get a rental for it or to show it in another theater that he owned and operated himself".

<sup>29</sup> The defendants contended that the establishment of the bureau was thoroughly supported, even suggested, by the exhibitors and that the exhibitor representatives "are whole-heartedly in favor of any plan that will help to wipe out this evil".



cases was substantiated by the government by what was felt to be adequate evidence.

Granting that the trial of cases involving the use of copyright may be a legitimate function of the courts, the question may still be fairly asked as to whether or not all such cases should be tried before the courts. Much can be said for such procedure. The argument, however, is not conclusive. In the first place, probably any type of case tried before a Board of Arbitration would fall within the jurisdiction of some court, and this would seem to be no more true in bicycling cases than in others. Furthermore where bicycling did exist, the practice was distinctly illegal and adverse to the interests of every honest distributor and exhibitor in the industry. That several distributors had claims pending against a given exhibitor alleging bicycling would, it is true, tend to create a presumption of guilt in the mind of a member of the Arbitration Board. On the other hand, barring collusion among distributors, the very multiplicity of such charges against a given defendant would also tend to heighten the likelihood of his guilt. Such prejudice as existed would seem to be only the normal prejudice against an economically unsound and legally invalid practice. That the distributors should take special measures to prevent it was no more than might be expected.

Article 4 provided that the exhibitor must pay for his films at least three days in advance of the date of shipment. Mr. Hess interpreted this clause as providing, in effect, that even if the exhibitor might reach some individual agreement as to terms of payment with a distributor, if subsequent disputes arose the provisions of Article 4 and not the subsequent understanding would be effective. "While it is true that some distributors may, in order to curry favor with an exhibitor, waive their rights to demand payment in advance of the delivery of prints of pictures, relying on the Board of Arbitration by an award to enforce the collection of rentals, distributors making a practice of waiving such right for such reason should be informed that such practice is

considered to be unethical." The government therefore contends that the Boards of Arbitration become in effect merely collection agencies, that awards are made primarily for collection purposes, offering as evidence that, in the case of a typical Board of Arbitration, of 275 awards made, 238 required payment of money damages. Clause 4, therefore, "arbitrarily imposed upon the exhibitors by the agreement of the defendant distributors, precludes any negotiations relative to the terms of payment irrespective of the financial and credit standing of the exhibitors".

The argument clearly involved two issues, not one. First, could it be contended that Boards of Arbitration were merely collection agencies because a very large proportion of the awards called for the payment of money damages, and, secondly, did the clause cited preclude negotiations relative to terms of payment?

It was to be expected that a great many of the disputes calling for arbitration would involve a question of film rentals, and it is a little difficult to see wherein a penalty other than a penalty of money damages could be effective in such cases; even in cases where film rentals were not involved it was not always easy to devise any fair penalty other than a financial one. Damage to someone had been done, and for the purpose both of providing recompense for such harm already done and of preventing its recurrence, financial awards would appear reasonable. Suspension of service on the part of distributors, either partial or complete, might and did serve in some cases. Yet it is not clear that these other types of penalties would render in the long run any more substantial justice—in cases, for instance, where violation of run, violation of protection, or damaged prints were involved. Certainly arbitration practices in other fields provide very substantially for financial penalties. There can be no question that the distributors in supporting compulsory arbitration had in mind that one primary purpose would be to insure financial protection against ex-

hibitors. There was nothing inherently wrong with such an objective.

The attack on the question of terms was stated in the following words: "The record does not contain any evidence whatsoever to explain why it would not be reasonable for any exhibitor . . . . to be able to contract on the basis of any method of payment for such pictures as might be acceptable to both parties. The evidence does not indicate that any other industry in the country is conducted solely on the basis of an agreement to pay cash in advance of the delivery of the articles contracted for." <sup>30</sup>

Strict reading of the clause certainly prescribed the method of payment. The requirement was undoubtedly based on the desire on the part of the distributors to make sure that they had their money before a positive print was shipped. Experience, particularly before 1922, certainly would seem to give good ground for belief that, with some exhibitors at least, rental never would be received if the distributor waited for his money until after the picture had been shown. Further, the comparison with other industries was not altogether sound. A wholesaler who ships merchandise and collects at some future date knows that part, at least, of that merchandise is still in the hands of the retailer awaiting sale. He can recover the goods, and in such event the retailer has gained nothing, while the wholesaler can sell that same merchandise elsewhere. However, a film when shown has brought the exhibitor his money within a few days and, even when returned to the distributor, probably cannot be leased by that distributor again in the same territory.<sup>31</sup> Furthermore, in actual practice the three-day re-

<sup>30</sup> Government Brief, pp. 75-76.

<sup>31</sup> The producer-distributors have advanced an interesting argument at various times to the effect that "The distributor in fact advances a form of credit because, after the contract is executed, the distributor is precluded from contracting to the neighboring theaters." This argument is far from convincing. On the theory that the producer places himself under contract with an exhibitor to produce for the latter certain specified pictures, such a position might appear tenable. It can scarcely be seriously alleged here. The only other basis for such a contention would be that some deposit, as a guaranty of ful-

quirement was not enforced, for many pictures were shipped C.O.D. and even on open account. It was only when dealing with an irresponsible exhibitor who did not pay his rental that it was evoked.

Article 8 provided in detail for the method of determination of play dates. The chief criticism of this article arose over the relationship between first-, second-, and subsequent-run distributors. Most contracts with subsequent-run exhibitors did not provide for actual play dates.

Contracts generally provide for the exhibition of a certain number of pictures per week or per month when available. The availability of these pictures for the subsequent-run exhibitors depends entirely upon the dates of their exhibition by the prior-run exhibitors. . . . Every distributor naturally desires to have his contracts played out as rapidly as possible. The difficulties experienced by subsequent-run exhibitors in securing play dates are occasioned by delays in the exhibition of the pictures by the prior-run exhibitors, so that the pictures do not become available for the subsequent-run exhibitors. The absence from the contract of any provision whereby subsequent-run exhibitors can force pictures to be played or released by prior-run exhibitors, so that they shall be available to the subsequent-run exhibitors, prevents the subsequent-run exhibitors from having any control whatsoever over their play dates and over the arrangement of their programs.<sup>32</sup>

The following testimony throws the problem definitely into relief.

X.Q. 450. In what section is the obligation to give the notice of availability within a reasonable time?

A. Section 9, Paragraph A of the Contract of 1926.

It is my opinion that that provision requires the distributor *within*

fillment of contract, was not demanded. But the failure to demand protection is scarcely to be construed as an advancement of credit.

A motion picture producer is creating goods on his own responsibility. He sells his product if and when he can. *This risk is reduced* when, by a definite contract, an exhibitor agrees, in advance of production, to buy. The exhibitor is certainly under no obligation, theoretical or otherwise, to pay until the pictures are delivered. In fact, if there be any advancement of credit, it is done by the exhibitors who "endorse" the sale of a picture in advance of its production.

<sup>32</sup> Government Brief, pp. 94-95.



*a reasonable time* after the picture is available to mail the exhibitor a notice to that effect.

X.Q. 451. Is there any express provision in the contract to that effect, that a notice of availability shall be mailed within a reasonable time?

A. No. The exhibitor who has a subsequent run has a remedy under this contract if he does not get his picture. After he has made repeated demands upon the distributor for the picture and the distributor does not give him notice of availability or make the picture available, that gives him a right to claim under this contract. He can go before the Board of Arbitration with that claim, and the Board of Arbitration will direct and order by their award the distributor to deliver the picture to the subsequent-run exhibitor notwithstanding the fact that the distributor has not secured a contract for the first run of the picture.

X.Q. 452. On what elements does availability depend?

A. The possession of the print of the picture; when the prints of the picture are distributed or shipped from the laboratories to the exchanges, they are then available for exhibition. . . .

There are other factors. That is, the run that the theater has contracted for, the protection that other theaters have received, and the protection that the specific theater has contracted for. One other element is the possible success of the picture. The picture may be contracted for one week, let us say, in St. Louis, and the picture is so successful that the first run holds it over for four weeks. Naturally, the availability of that picture for the subsequent exhibitors is delayed that additional three-week period of time.<sup>33</sup>

It is probable that real cause for complaint on this score existed. This problem of protection always has been a difficult one to handle. For the independent exhibitor it is becoming more and more so as the distributor-controlled and the chain theater movements spread.<sup>34</sup>

Article 19 provided that "this contract is complete, and no promises or representations have been made by either party to the other except as set forth herein". The government introduced considerable evidence to support its allegation that this article was applied when exhibitors attempted to introduce verbal agreements in an effort to secure relief,

<sup>33</sup> Government Brief, pp. 90, 91, 92.

<sup>34</sup> See Chapter VII.

but was not applied when the distributors introduced such evidence in connection with claims against exhibitors. Here, again, there was no justification for discrimination between the two parties, and it should have been condemned if and whenever such discrimination was allowed to exist. It is only fair to say that the Hays Organization was endeavoring constantly to secure a consistent interpretation of the contract. The problem here seemed to be one of attempting to secure uniform adherence to the provisions of the contract, while at the same time allowing the local boards as much freedom in their actions as was consistent with the contract and with fair dealing.<sup>35</sup>

The government concluded from the evidence submitted and the argument developed that compulsory arbitration as operative was illegal, since it constituted an unreasonable restraint on the freedom of the exhibitor to contract for motion picture films. It argued that since a state had no right to impose compulsory arbitration upon industrial groups,<sup>36</sup> neither could any voluntary association of individuals impose that which the state could not impose. If it was contended that the action was purely defensive and essential to the continued prosperity of the industry, it was replied that this did not render it legal, that the motive or necessity which induced a compact did not render it valid. It argued further that the enforcement system effectively prevented appeals to the courts because "service under any contract will not be continued without security, even pending appeal, and because the average subsequent-run exhibitor is unable to put up the security indicated by the Arbitration Board under enough contracts to enable him to operate his theater during such appeal, and both the Federal Arbitra-

<sup>35</sup> The legal counsel for the Film Boards of Trade had consistently taken the position in every case that a decision once rendered was final and that the case could not be reopened. This had at times proved most embarrassing, especially where the awards, according to the New York office, were not based on a proper interpretation of the contract.

<sup>36</sup> *Dorchy v. Kansas*, 264 U. S. 286.

tion Law and the New York Arbitration Law provide for appeals in certain cases”.

Such in brief was the basis upon which the courts were asked to stop the further operation of compulsory arbitration in this industry. As has already been indicated, there were other grounds on which the plan was attacked. Some exhibitors in particular were convinced that the machinery which had been set up for the operation of the plan was inadequate and unsatisfactory and should be amended. Regarding the form in which it should be amended there was no unanimity of opinion. It was suggested that no adequate solution would be found until the board of six was abolished and until in its place were set up boards of three. These smaller boards would consist of one representative of the exhibitors, one of the distributors, and the third person chosen by these two. A great many persons seriously questioned whether or not this would provide any improvement. It might, for example, result in the actual rendering of the decision by the third person, a person who might in no way be interested in or familiar with the motion picture industry. Others suggested that arbitration should be voluntary and not compulsory. In fact a resolution to this effect was introduced by the exhibitors at the time that the New Standard Exhibition Contract was under discussion. It was later withdrawn. By others it was contended that certain matters should not be submitted to arbitration but should be handled by the courts. Particularly illustrative of such matters were those cases dealing with violation of the Copyright Act and cases involving N. S. F. checks. It was further urged that the right to trial by jury should not be prohibited. Others urged that appeals to the court should be rendered easier, and finally, of course, it was contended that any provision for compulsory arbitration before becoming effective should be submitted to exhibitors for approval.

There seems to have been no fundamental criticism with the *machinery*, other than that it was compulsory and not voluntary. The government contended that the difficulty

with the compulsory feature lay in the fact that it was made compulsory by all distributors and under practically an identical contract. Most states of the Union do not provide specific arbitration laws. It is difficult, therefore, for anyone who is familiar with the industry to understand how any form of compulsory arbitration set up by an individual producer-distributor would be effective unless he could secure the cooperation of other producer-distributors in enforcing an award. In fact, it is probably true that the supplementary agreements, of which the government complained, had their origin in the very fierceness of the competition between distributors. It was because so many exchange managers were unwilling to trust so many other exchange managers that check-ups on each other's actions seemed to be called for.

It must also be borne in mind that it was necessary to segregate clearly the arbitration clause and the rules supplementing that clause on the one hand and, on the other hand, the various specific provisions in the contract to which objections were raised. It was no fault of arbitration that the contract to be interpreted was not all that it might be. The government maintained that the contract itself was unfair, that arbitration was merely a means of enforcing a particular interpretation and thus of attaining certain definite ends. Even if one were to grant that this was so, it may be suggested that perhaps arbitration provided the best way out for the exhibitors. Under the plan of arbitration, the exhibitor had at least an opportunity to appear before a presumably disinterested body and present his side of the case, thus preventing an "unfair contract" from being interpreted arbitrarily and without reasonable opportunity for recourse.

This suggests the third main line of attack on compulsory arbitration, namely, that prejudice against the interests of the independent exhibitors was inherent in any form of compulsory arbitration which had yet been suggested. The question as to whether or not prejudice existed must resolve itself into a question of individual judgment. It is in-



teresting to observe that the Government Counsel is reported to have replied to an inquiry from the court to the effect that it had not observed any evidence of prejudice, but on the contrary its attack was centered upon the set-up. It was contended that representatives of the distributors, through fear of losing their positions, would never decide against their employers on any question of major issue. The loss of such a position would be the more serious because such a discharged exchange manager might have difficulty in finding employment with any other large producer-distributor under the circumstances. Furthermore, although a distributor representative might not sit in in cases involving his own interests, yet a claim filed against him would be jeopardized if he had previously failed to support other distributors. The exhibitors in their turn were fearful lest failure to support exhibitors' interests would result in retaliatory measures in case a complaint should be filed against them at some future time.

On the other hand, it must be borne in mind that the keenest of competition did exist between distributors for local business. Sales were dependent in large measure upon exhibitors' goodwill. Not to cultivate such goodwill would seem to be a short-sighted policy. Instances unquestionably occurred where distributors failed to urge claims and even refused to present definite evidence in support of a claim for fear of losing exhibitor goodwill. It would seem that, granting the opportunity for prejudice and the undoubted exercise of it from time to time, in the long run the contract as used was fairly interpreted and the Boards of Arbitration hesitated to render an award which was not in their minds a fair one.

However, the decision in the case against the Paramount Famous Lasky Corporation, rendered by Judge T. D. Thacher, of the United States District Court, Southern District of New York, October 15, 1929, held the Standard Exhibition Contract as used, and in particular the provisions relating to arbitration, to be illegal "both at common

law and under the Sherman Act". The way was left open, however, for revision. The following quotations are from the decision:

Assuming the contracts and the system of compulsory arbitration to have been just and reasonable in operation, the fact that many exhibitors were not represented in the conferences leading to their adoption cannot be disputed. . . .

That competition between the distributors has been promoted by the adoption of the Standard Exhibition Contract, and that in many ways general trade conditions have been vastly improved, I have no doubt, and so find. But the record is equally clear that all this good has been accomplished through the exercise and irresistible economic force consolidated by combination in the hands of the distributors, who collectively control the available supply of films and by virtue of this control have imposed their will upon the industry. . . .

Gains resulting from such restraints to the industry as a whole do not in the eyes of the Statute justify the vicarious sacrifice of the individual. . . .

Nothing that has been said should be taken in derogation of the right of trade or commercial groups, or of traders generally, to voluntarily impose upon themselves standard forms of agreement which do not unduly restrict competition and thus restrain trade, or to agree that all controversies arising between them shall be settled by arbitration. Such agreements dealing only with the rights of those who execute and intend to be bound by them are normal and usual, and are proper instruments in the lawful conduct of trade. It is only when such agreements are sought to be imposed upon others, regardless of their wishes, by coercive combinations having the power to say, "Take what is offered or get nothing," that they become illegal . . .

Upon settlement of the decree the parties may suggest provisions, if such be feasible, under which uniform contracts containing arbitration clauses may be voluntarily adopted by the members of this industry without coercion or other unlawful restraint.

Following the handing down of Judge Thatcher's opinion, arbitration was suspended nationally, and the 32 Film Boards of Trade suspended operations pending the issuing of the court's final decree.

In December a series of conferences was begun in New York by representatives of the Allied States Association,

the Motion Picture Theater Owners Association, and the Hays Organization for the purpose of drawing up a new standard exhibition contract. Because each of the three groups chose five representatives to the conferences they are known as the 5-5-5 conferences. Among other changes, it was intended that the new contract should make decided modifications in arbitration. Each of the two exhibitor associations submitted its proposals in written form. These two groups agreed that arbitration should be resumed, but that it should be entirely voluntary with no element of coercion in adoption or enforcement.

Before the distributors had submitted their proposals, the Federal District Court of New York rendered its final decree, January 22, 1930, making operative its previous decision declaring compulsory arbitration illegal. This decision put a sudden end to the 5-5-5 sessions because several distributors feared that participation in the conferences, or any other action which suggested concerted effort, would be in violation of the Thacher decree and might result in their indictment. A number of these distributors set to work separately upon the drafting of individual contracts. By April, 1930, some of these contracts had been put into use.

In April, 1930, the 5-5-5 conferences were resumed. A committee made up of two representatives from the Hays Organization, two from the Allied States Association, and two from the Motion Picture Theater Owners Association, and known as the 2-2-2 committee, undertook the larger part of the work and reported to the 5-5-5 conferences. By July 3, 1930, the conference had drawn up a new standard exhibition contract, known as the Standard License Agreement, which contained definite provisions for voluntary arbitration and a set of rules for the operation of an arbitration system. The contract was not put into use at this time, however.

On November 24, 1930, the United States Supreme Court sustained the Thacher decree declaring involuntary arbi-

tration illegal. In upholding Judge Thacher's decision, the court declared:

It may be that arbitration is well adapted to the needs of the motion picture industry; but when under the guise of arbitration, parties enter into unusual arrangements which unreasonably suppress normal competition, their actions become illegal.

Sales of pictures continued to be made by the individual company contracts which had been drawn up and put into use early in 1930. These contracts did not have provisions for compulsory arbitration. Largely because distributors felt that the legality of a standard contract might be questioned, use of the new standard contract drawn up by the 5-5-5 conferences was still being held up.

Late in 1931, however, the distributors, in cooperation with exhibitors' committees, decided that they might put the Standard License Agreement into use some time in 1932 for the selling of pictures for the 1932-1933 season. If this was done, it was planned that the exhibitor would have the right, in his dealings with any one distributor, to choose as between the Standard License Agreement and that distributor's individual contract.

Until such time as the Standard License Agreement would be put into effect, the producers' individual contracts were to be used. It should be noted that many of these individual contracts were objected to strenuously by independent exhibitors, and particularly by the Allied States Association, on the ground that they differed from the 5-5-5 contract in such a way as "would not only take away from the Exhibitor what slight relief he had gained, but would also impose new provisions detrimental to the Exhibitor and advantageous to the Distributor".<sup>37</sup> It was the contention of these objectors that, inasmuch as the Standard License Agreement received the approval of "the heads of the producer and distributor groups", some of whom "stated that

<sup>37</sup> *The Allied Exhibitor*, August, 1931, p. 9.



in their opinion it was a very fair contract", it might fairly have been expected that the distributors would draft their individual contracts so as to embody "therein the essential clauses and spirit of the 5-5-5 contract".<sup>38</sup>

Selling plans as proposed for the 1932-1933 season provided that the contractual relations between the distributor and the exhibitor would follow a different procedure from that used in past seasons. It was planned that when a distributor was ready to sell to an exhibitor, he would mail to the prospective account a copy of the Standard License Agreement providing for a uniformity of operations in selling and playing pictures. At the same time, the distributing company would send the exhibitor a copy of its own individual contract form. Before deals might be opened, the exhibitor would acknowledge the receipt of both contracts and would indicate to the distributor whether he wished to buy on the basis of the Standard License Agreement or on the basis of the individual contract. The contract form chosen would then be deposited with the Film Board of Trade in the exhibitor's territory. If the exhibitor chose the standard contract, negotiations would be made, it was planned, by means of a short contract form which, in addition to verifying the agreement obtained by the signing of the Standard License Agreement, was to contain provisions for sales policies, terms, etc. The distributor would be permitted to insert special clauses when such clauses did not conflict with provisions of the longer contract form.

As time went on it became increasingly apparent that the 5-5-5 contract was not going to prove acceptable. During the early summer of 1932, largely at the instigation of Sidney R. Kent of the Fox Film Corporation, negotiations were instituted looking toward the drafting of a new contract. It was proposed that the contract be adopted for a definite period of three years. The so-called Kent Plan consists of twenty-one clauses and four optional clauses. It pro-

<sup>38</sup> *Idem.*

vides for an Optional Standard License Agreement<sup>39</sup> to be used by the respective distributors as an alternative to the distributors' own form, the exhibitor having the free option of choosing which form of contract he desires to accept.

Incorporated in this contract is a provision for the arbitration of disputes. The provisions controlling arbitration are to be found in the twentieth clause of this agreement, being preceded by an introductory paragraph which states that the clause "is optional with the parties thereto". Briefly, this section of the contract provides for the settlement of disputes by an Arbitration Board consisting of four members "each of whom shall be engaged in the motion picture business, and two of whom to be appointed by the Exhibitor, and the remaining two appointed by the Distributor". Either party may resort to arbitration upon making written request nominating two arbitrators and designating the time of the hearing, which date shall not be "earlier than seven (7) days from the date of the sending of such notice" under ordinary circumstances. Within five days after the mailing of such request, the second party must name two arbitrators. "If the arbitrators, or a majority of them, are unable to reach a decision, then they, or a majority of them, shall immediately select an umpire who shall not be engaged in the motion picture business." The clause further provides: "The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder; provided that if after a full hearing of any controversy . . . the arbitrators . . . are of the opinion that because of unusual circumstances . . . a strict enforcement of the provisions . . . would impose undue hardship upon one of

<sup>39</sup> The full text of the Optional Standard License Agreement, 1933, appeared in the *Motion Picture Herald*, November 19, 1932, pp. 23-26. In the January 21, 1933, issue of the same journal (p. 14) appeared the "Final Text of the Kent Plan for Appeals Board and Contract". The optional feature regarding the use of this contract was undoubtedly provided by the distributors in hopes of forestalling possible governmental action under the antitrust laws.

the parties, the arbitrators . . . may recommend . . . a settlement . . . upon such terms and conditions deemed by the arbitrators fair and just."

It is further provided that if such settlement is not agreed to by the parties within five days "the controversy shall be deemed withdrawn from the arbitrators and shall be submitted, with a written statement of all of the facts adduced at the hearing before the arbitrators together with all documentary evidence, to the National Appeal Board in New York. The disposition by the National Appeal Board of any such recommendation shall be final and binding upon the parties thereto." Finally, it is provided that if the exhibitor fails to submit to arbitration or to abide by the award, "the distributor may at its option suspend the delivery of motion pictures". If the distributor fails to submit to arbitration or to abide by the decision, the exhibitor may at his option "terminate this or any other existing license agreement".

Provision has also been made for the creation of a National Board of Appeals to which either party to a local arbitration proceeding may refer. This National Board is to have "full power to pass upon the whole controversy involved in the arbitration". In general the local boards will operate much as they have done in the past. Special provision is made for the creation of new local committees to deal with the problems of protection and run controversies and to deal with complaints of "alleged overbuying by any circuit or other exhibitor".

The National Board, which is empowered to deal with any sort of controversy arising under the contracts, is expected to deal with controversies involving "a circuit of theaters affiliated with a producer or distributor" as well as with the broader question arising out of distributor-exhibitor relations. For purposes of complaints not involving a circuit of theaters the National Board "shall consist of three unaffiliated exhibitors and three distributor representatives". Where the complaints involve a circuit of theaters the Board "shall consist of either (a) four unaffiliated exhibitors, two

distributor representatives and two affiliated circuit representatives; or (b) two unaffiliated exhibitors, one distributor representative and one affiliated circuit representative, and the action of the majority shall be the action of the National Board”.

Inasmuch as the disputes which call for settlement will arise over the interpretation and fulfillment of the provisions of the exhibition contract used, a brief statement of some of these might well be given here. Since the provisions affecting the problems of protection and of percentage bookings, however, are taken up elsewhere, it will not be necessary to refer to them here. The contract shall continue for one year unless otherwise provided in the schedule. The distributor warrants that each print shall be in good physical condition and “will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment”.

The distributor grants a limited license under the respective copyrights to show the picture, “for the number of consecutive days specified . . . ; provided that the reproducing equipment shall operate reliably and efficiently . . . ; and provided further that if copyrighted musical compositions are included in such recorded sound the exhibitor now has . . . a license from the copyright proprietor thereof . . . to perform publicly the said copyrighted musical compositions”.

The distributor agrees that he shall make delivery of prints to the exhibitor in time for them to be properly inspected and projected before the usual time for opening the theater. The exhibitor agrees to pay for the pictures at least three days in advance of the date of delivery.

The section providing for the selection of play dates is given in full:

SIXTH: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or protection granted or hereafter



granted by the Distributor to the other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

The contract was adopted by the major distributors, including, before the end of 1932, Paramount Publix, RKO, Metro-Goldwyn-Mayer, Fox Film, Educational,—World Wide, and Universal.<sup>40</sup> The contract was also acceptable to the Motion Picture Theater Owners of America. Allied States, however, was not willing to endorse it, and on December 1 the "producer concessions and proposals decided on at the conferences between the two exhibitor national organizations . . . were rejected by a vote of five to one. By the same vote the Brookhart Resolution and Bill, now on the Calendar of the United States Senate, were endorsed."<sup>41</sup> Those who hesitated to endorse the new contract form felt that "though acceptance of the producer-distributor's pledges . . . does not necessarily mean abandonment of . . . efforts to have the Bill enacted into a law, that will follow as a natural thing, for (your) position as an organized group will become weakened before the eyes of Congress and the M. P. T. O. A. leaders cannot be expected to aid in such a fight".<sup>42</sup>

<sup>40</sup> See the *Motion Picture Herald*, December 10, 1932.

<sup>41</sup> See *Harrison's Reports*, December 11, 1932.

<sup>42</sup> *Ibid.*, November 26, 1932.

## CHAPTER X

### THE INDEPENDENT EXHIBITOR

THE widespread integration in the motion picture industry, and particularly the advent of producer-controlled theater chains, could not do otherwise than seriously affect the status of the independent exhibitors. Although it may be true that with the coming of these developments the position of the more efficient independent exhibitors was economically sound, the lack of organized effort at the outset made it impossible for these units to cope with the conditions imposed upon them by the large corporations which controlled the industry. Convinced that a strong national organization would provide an effective means of promoting and protecting the cause of the nonaffiliated theater, several outstanding independent exhibitors, on August 10, 1928, re-organized the Allied States Association of Motion Picture Exhibitors.

The original Allied States Association was formed in 1923 by several prominent members of the Motion Picture Theater Owners Association as a protest against some of the practices of that group. The Motion Picture Theater Owners Association had been the recognized exhibitor organization, having been instituted in 1920 by a large delegation of independent theater owners to combat the policy of the then Famous Players-Lasky Corporation in acquiring theaters. The organization of this association comprised both regional and national government. The state or regional groups operated as independent associations. National officers were elected by representatives of the various regional associations. The national association served to co-

ordinate the activities of the regional groups and to provide unified action on problems of major importance to motion picture exhibitors. Dissension in the ranks of the Motion Picture Theater Owners Association, in 1923, centered about the election of certain officials who were reported to be in sympathy with producer-theater development.

The organization of the original Allied States Association was patterned after that of the Motion Picture Theater Owners Association. In many instances the regional groups simply transferred their allegiance from one national organization to the other. Officers were elected from the founders, and funds were first raised through popular subscription. The Allied movement spread rapidly but failed to develop into a strong national organization, principally because of rather indifferent regional support. The original Allied group did not achieve outstanding success, its accomplishment being of value principally as a threat against alleged unfair producer activities. In 1926, following a promise by the Motion Picture Theater Owners Association to serve the interests of the independent exhibitor primarily, the Allied States Association voted to disband and affiliate with the former.

Many of the changes which occurred in the industry following 1926 operated to the disadvantage of the independent exhibitor. According to certain exhibitors block booking as enforced by the distributors, arbitration as practiced in the industry, and an unwieldy, inequitable, standard contract aggravated their situation. The real difficulty, however, was the tendency of producers to monopolize the field of exhibition. This invasion in its earlier stages was confined to the building or acquisition of large first-run houses in key cities. It was justified and excused on the ground of necessary exploitation of films. Producers, however, did not stop with a representative assortment of key theaters but began to acquire theaters of all classes, singly and in chains.

Theater owners who remained independent often found it exceedingly difficult to compete with these producer owned

or controlled theaters. In the first place, affiliated theaters usually were given their choice of films. In a number of instances, complaints were reported to the effect that affiliated theaters in various places purchased practically every available film, despite their inability to use them all, in order to cut off the supply to the independent exhibitors. In other instances, favored theaters were said to have demanded and received protection<sup>1</sup> on the first runs wholly disproportionate with their rights and necessities. These demands involved not only longer periods of protection, but also unreasonable extensions of competitive areas.

Many independent exhibitors believed that the introduction of sound pictures was utilized by producers as a method by means of which to hasten their monopolization of the industry. These exhibitors believed also that affiliated theaters found it to their own advantage to corner the supply of approved sound-reproducing apparatus. This was accomplished without collusion because sound pictures were new and the price of the reproducing equipment was prohibitive. When other less expensive, but generally pronounced satisfactory, apparatus was made available to the independent exhibitors, producers claimed the right not to furnish their films for reproduction on machines which they believed to be of inferior reproduction value. In some instances, claims of noninterchangeability were justifiable; in others, however, they were open to question. Where independent exhibitors were fortunate enough to secure generally accepted sound equipment, they were confronted immediately with greatly increased film rentals and, in addition, heavy score charges for the synchronized music right. A few exhibitors reported that the prices for the sound product and score charge represented an increase of more than 100% over that charged for similar types of silent pictures.

Although the Motion Picture Theater Owners Association continued to operate, it failed to remedy these difficul-

<sup>1</sup> See pp. 206-212.



ties. The organization, though large, was not particularly strong or aggressive. In 1927, because of an expressed belief that more could be accomplished in a round-table discussion than by open hostility, producer-distributor theater owners were granted membership. In the following months the organization became quite definitely dependent upon the new type of membership for its financial support, and in 1928, with the election of several of the chain representatives to the directorial cabinet, it was apparent that control of the national governing body had passed from the hands of the independent exhibitors.

Believing that their efforts within the organization of the Motion Picture Theater Owners Association were futile, certain prominent independent exhibitor members of the original Allied group, acting in behalf of their own and several other regional groups, decided to reorganize the Allied States Association. In their opinion the existence of the independent exhibitor was necessary to the welfare of the industry. They pointed out that the public's interest and that of the independent exhibitor were one and the same, whereas the affiliated theater's interest was primarily that of the producer. It was their opinion, furthermore, that the independent theater possessed a certain individuality not noticeable in the large chain. From an economic standpoint they believed that efficient, modern, independent theaters, given a reasonable supply of good pictures and fair treatment by producers, were in a position to compete favorably with affiliated theaters. They realized, however, that as individuals it would not be possible for independent exhibitors to protect their interests in competition with a unified producer-distributor-exhibitor effort. It was proposed, therefore, to create a strong national organization known as the Allied States Association to provide an effective agency to promote and protect the interest of the motion picture exhibitors of the United States in a lawful manner and, to the extent that the interests of the exhibitors coincided with the interests of the producers of the motion picture industry,

to promote and protect the interest of the industry as a whole.

Preliminary efforts were confined to the election of temporary officials; the raising of funds, \$25,000 of which was subscribed immediately and \$100,000 assured in the very near future; and to missionary field work. It was believed that one important factor upon which the association's success would depend was the securing of the services of a prominent outsider to lead the organization. In January, 1929, the association announced the appointment of Abram F. Myers, formerly chairman of the Federal Trade Commission, as president and general counsel. His contract was reported to cover a number of years of service with an optional renewal clause appended thereto. Mr. Myers had acquired an intimate knowledge of the motion picture industry through his activities in the government's suits against the General Film Company and the Paramount Famous Lasky Corporation, and as chairman of the Motion Picture Trade Practice Conference held in New York in October, 1927.

Immediately following the appointment of Mr. Myers, the Allied States Association formulated an organization, adopted a constitution,<sup>2</sup> and prepared for an extensive development campaign. The organization was designed in such a manner as would minimize internal politics. Its structure was similar to that of the original group; that is, a national or federal government was formed to coordinate regional or state groups on matters of common interest. Regional groups were free in the conduct of their own affairs except in matters pertaining to national policy.

To attain its declared objective the association required of its members the right to represent them and their respective exhibitor interests in public relations and in negotiations

<sup>2</sup> The constitution adopted in 1929 is still in effect at the present time. The president of the association is now W. A. Steffes. Executive offices are in the Union Trust Building, Washington, D. C. The association publishes as its monthly organ the *Allied Exhibitor*.

with other branches of the industry, including suppliers of sound equipment; to acquaint the public and the various agencies of the government with conditions in the motion picture industry from the standpoint of the exhibitor; and to aid and encourage directly, and by cooperation with others, the development of higher standards of artistry and of moral and cultural values in the production of motion pictures.

The association further demanded the right to use its endeavors to promote fair methods of competition in the motion picture industry and to oppose restraint of trade and monopoly wherever those conditions existed; to gather, compile, and disseminate for the benefit of its subscribers and the interests represented by them useful information concerning operating conditions, including relations with the suppliers of film and equipment, with labor organizations, and with various agencies of the government; and "to do all other acts and things proper or necessary" to the attainment of the objectives of the association.

Any organized association of motion picture exhibitors was eligible for membership in the Allied States Association. Application for membership constituted the forwarding to the home office of the association in Washington, D. C., a duly executed agreement with an attached copy of the Allied States constitution, together with information as to the territory governed by the applicant and the name of the applicant's proposed representative. Applications for membership were acted upon at the first meeting of the governing board of the association. Candidates were elected to membership by a majority vote. During the interval between receipt of application and action of the board, the applicant was considered a member. Each regional association was entitled to representation in the national government by designating one representative on the board of directors. Each representative was entitled to one vote only.

Any exhibitor of motion pictures, including affiliated theaters whose interests coincided with the object of Allied States,

was eligible for membership in state or regional associations. Regional associations were to be recruited from the ranks of the regional groups of the Motion Picture Theater Owners Association, and from independent associations, by the transfer of the entire memberships of such groups to the Allied States Association; and through the formation of regional associations by exhibitors who were interested in the development of the Allied plan.

The management and control of the Allied States Association was vested in the board of directors and the executive committee, whose activities were limited only by the established by-laws of the organization. Neither group, however, was empowered with the right to impair the obligation of any contract made by the organizers and underwriters of the association with the person chosen by them to serve in the joint capacity of president and general counsel. It was the privilege of the board and the executive committee to delegate all or any part of their authority to the president-general counsel.

The executive committee consisted of five directors elected by the board of directors. When the board was not in session, the executive committee acted on behalf of the association in any matter upon which the board of directors was qualified to act. The board of directors, in electing the members of the executive committee, designated one such member as chairman of the committee. Two members of the committee, designated by the chairman, constituted an auditing committee.

The president-general counsel was the supreme executive head of the association. He was vested with full custody of all funds, both receipts and disbursements. The secretary maintained a complete and detailed record of all meetings of the board of directors and the executive committee. The duties of other officers, if any were appointed, were to be prescribed by the board of directors and the executive committee.

The only amendment to the by-laws since December 17,



1928, was adopted at the meeting of the Board of Directors in Chicago on January 5, 1932. This amendment reads as follows: "The Board of Directors shall appoint a President for a term of one year, the President to be other than the General Counsel and that a Vice President and Treasurer be appointed." Theretofore all offices were held by the general counsel.

The expenses of conducting the Allied States Association were apportioned among the member groups in accordance with a schedule drawn up by the board of directors. Great care was exercised in the establishment of each quota and in its application. Local conditions were given due consideration and every effort made to avoid any iron-clad enforcement which might prove detrimental. In the final analysis each member association contributed in accordance with its financial capacity.

In practice, the operation of the Allied States Association was largely under the direction of the president and general counsel. The board of directors was scheduled for one meeting annually, although it was the president's privilege to call special meetings at any time. A majority of duly elected directors constituted a quorum. The president presided at all meetings of the board and was entitled to vote in case of a tie. Representation by proxy was permissible. On emergency matters it was the president's right to poll the board by mail or telegraph.

Immediately following the establishment of definite organization policies, various Allied leaders volunteered their services to hasten the progress of the membership campaign. The total number of motion picture theaters in the United States was estimated at from 20,000 to 23,000, 16,000 of which operated regularly six days a week. Of the latter group, 7,000 theaters, which included practically all first-run houses in the larger cities and which returned over two-thirds of the total box office revenue in the United States, were either affiliated or under producer control. The remaining estimated 9,000, a majority of which were

small-town and subsequent-run houses, formed the nucleus from which the Allied States Association hoped to formulate a unified organization. Although definite information was not available, the Allied States officials estimated the purchasing power of their potential membership to be sufficient to return a sizable profit to at least three producers whose output averaged around 30 feature pictures each per year. In March, 1932, there were 22 territories representing 36 states affiliated with Allied with a total membership of approximately 6,000 theaters.

Shortly after accepting the presidency of the Allied States Association, Mr. Myers succeeded in getting an injunction<sup>3</sup> to restrain sound-equipment manufacturers and sound-film producers from prohibiting justified interchangeability. In Mr. Myers' opinion, the case was similar to that of *United States v. Motion Picture Patents Company*. While it may be true that the practice of restraining interchangeability was doomed in any event, the injunction was valuable in that it hastened a general recognition of the problem and in that it marked a definite accomplishment on the part of Allied.

Another major task confronting the association was to establish some reasonable assurance that members could secure a supply of pictures on satisfactory terms. To accomplish this purpose an agreement known as the Allied States Franchise Agreement was drawn up. The agreement involved Tiffany Productions, Incorporated, and the RKO Distributing Corporation as producer-distributor members; the Allied States Association in the field of exhibition; and RCA Photophone, Incorporated, as suppliers and servicers of high-quality sound reproducing equipment, the prices and terms of which were within the reach of the small independent exhibitor. The agreement was drawn up in such a manner as to provide a basis for cooperative advantages.

<sup>3</sup> *Exhibitors Herald World*, February 2, 1929.

Members operated as separate units, free to conduct negotiations with any company regardless of its associations.

Under circumstances as they existed, the independent theaters could obtain good first-run attractions by booking the productions of several small producers and the less attractive pictures of those large distributors who did not operate local theaters. To depend largely upon these sources, however, would hardly be satisfactory. In the first place, it was to the advantage of the independent producer to sell his pictures first to a large chain if possible. The element of uncertainty became an inherent weakness in such sources of supply. Furthermore, independent producers as such appeared to be gradually disappearing from the field, especially those producing pictures solely for exhibition in independently owned and operated theaters.

Naturally the value of any such franchise depended upon two factors of outstanding importance, namely, the status of the company proposing the franchise and the contract itself. The position of the RKO Distributing Corporation at the time this franchise was proposed was, of course, definitely known. Unfortunately the feeling was very general among independent exhibitors that at no time was RKO thoroughly in sympathy with the franchise agreement nor wholeheartedly behind an attempt to make it a success. The feeling prevailed that this company was using the franchise as a means of cultivating the goodwill of the independents; in other words, that it considered advisable a gesture of friendliness in the direction of the small independent theater operators. This was particularly important since RKO was itself just launching a policy, the future of which was not altogether certain, of producing a much higher class of pictures than it had made formerly; and also since the power of Allied States might prove to be greater than was at first anticipated in some quarters.

Tiffany Productions, Incorporated, operated only one theater, the Gaiety, which was used primarily for exploitation purposes in New York City, and it apparently did not

intend to develop a large theater chain. Its distributor organization consisted of 34 exchanges. Evidently it had consented to become a party to the agreement in order to expand the existing market for Tiffany pictures.

The franchise agreement represented a very definite accomplishment. It offered certain concrete and obvious advantages to the smaller producer and to any producer who did not control his own theaters. It also gave very real advantages to the unaffiliated exhibitor; it insured him a substantial and reasonably definite quantity of product which, even though it might not provide for all his requirements, would give a background for his yearly program. Under the conditions prevailing, this was an accomplishment of major significance. Furthermore, the price for each picture was determined separately. This provision met an objection long raised against the sale of pictures in blocks, namely, that good pictures and bad were all lumped together and sold at a figure which did not give adequate consideration to variations in quality or box office value.

The franchise agreement did even more, because the estimated total exhibition value of a picture was agreed upon in conference between the distributor and representatives of the exhibitors, and this total figure was then broken down into specific allotments against individual theaters. This provision was clearly designed to prevent a distributor from placing a fictitious and arbitrary valuation on films to be sold to exhibitors who had committed themselves to purchase in advance of the determination of a price. Finally, should any such exhibitor feel that he had been unfairly treated, the agreement provided for a subsequent judicial review of the price charged each exhibitor. All these advantages offered the independent theaters a real incentive to accept the agreement.

At the same time, the agreement called for careful scrutiny and should not have been entered into without a full appreciation of its content. For one thing, by accepting the



agreement an independent theater would be definitely committed, for five years in advance, to exhibit the sound pictures produced by RKO and Tiffany up to 52 per year.<sup>4</sup> This was quite irrespective of how good or how poor such pictures might be. Considering the variability of quality in pictures commonly produced in the past, both within a single year and also from year to year, the exhibitor might feel that he was forced to take a considerable number of pictures either of distinctly poor quality or decidedly unadapted to his local market. The fact that he might, under the Allied Franchise Agreement, pay a lower price for such pictures, which it was anticipated would have somewhat less box office value than other pictures, does not solve the difficulty. Poor pictures and pictures not well adapted to particular communities are a poor investment regardless of price.

It should be noted that other difficulties might develop. If the producer decided to adopt modifications of a technical character which necessitated alterations in theater construction in order to exhibit the pictures (such as sound requires), the exhibitor who for any reason was unable to make such modifications might find himself in rather serious difficulties. It might, however, be safe to assume that the closest of co-operation between producers operating under the franchise agreement and the exhibitor interests could be expected, since the interests of the former would become more and more closely allied with those of the independent theaters. Furthermore, every producer can be expected to make the greatest effort to create the very best pictures of which he is capable with the funds and talents available.

In the present instance the larger the number of franchises

<sup>4</sup> Originally there were between 1,500 and 1,600 Tiffany franchises sold and about 750 RKO franchises. Tiffany violated the terms of the franchise by not producing the necessary number of pictures the second year. Therefore, the theater owners took advantage of the opportunity to cancel the franchises; there are probably few in existence at the present time. By March, 1932, there were possibly 300 RKO franchises still in effect. The others had been canceled by mutual consent, and there had been no effort on the part of either Tiffany or RKO to secure new ones.

sold, the more money the producers had at their command. Just what this figure might be was uncertain, but obviously there were limitations. The franchise applied only to sound pictures. A survey made in 1929 indicated that of approximately 22,624 motion picture theaters in the United States only 10,000 were wired for sound pictures. It may be assumed that a vast majority of the affiliated houses were wired. This would reduce still further the number of theaters available for the Allied States Franchise. Published statements indicated that it was hoped to secure 5,000 franchises. It is probable that this estimate was somewhat overly optimistic. However, between 3,000 and 4,000 franchises might reasonably have been anticipated. Under favorable circumstances this number should provide funds adequate to finance a substantial list of good pictures. There is some question as to the absolute soundness of Allied's estimate that the independent theaters could provide business for three producers.

The section <sup>5</sup> in the franchise agreement concerning price determination calls for definite consideration. Two particular points may be named. First, with regard to exhibitor representatives who advise the distributor on the exhibition value of each picture, the article states: "The distributor makes no representation that such representatives will be so appointed or will act hereunder. If said representatives are not so appointed or cannot or do not act hereunder, or if said representatives and the distributor fail to agree upon the exhibition value of any such motion pictures, the exhibition of all such motion pictures on which there has been no agreement shall, for the purposes of this franchise, be fixed at three times the negative cost thereof, as shown on the books of the producer . . . ." In other words, if the distributor should have good reason to believe that a given picture would not prove a success or that excessive and avoidable wastes had been incurred in producing such a

<sup>5</sup> Section 3.

picture, he could, by the simple expedient of refusing to appear or to agree, automatically insure to himself a valuation of three times his given book value of the negative. The opportunities thus bound up are obvious.

Second, the motion picture industry has long assumed the nonexistence of any definite relation between negative cost and exhibition value. In the present case, it is assumed that a relationship does exist and that it may be expressed in a definite figure more or less applicable to all pictures produced. It is quite possible that a wholly satisfactory answer to such questions as these can be found only if and when the exhibitors themselves have some special voice in the determination of the production program.

Finally, the section<sup>6</sup> relating to arbitration is of extremely limited application. Appeal may be had to the National Appeal Board "relative to an adjustment of schedule prices". Only by the widest of interpretation could this board arbitrate such questions as violation of protection, failure to deliver, failure to designate play dates, or questions involving the local rejection of pictures on racial or similar grounds. Such claims, however, probably represented well over one-half of all exhibition claims filed in 1928 before the Arbitration Boards. Various reasons may be advanced to explain the omission of any general arbitration provision in this franchise agreement, reasons which cannot be discussed here. The fact of the omission, however, is worthy of note.

Following the announcement of the franchise plan, Mr. Myers and several other Allied leaders, together with representatives of the cooperating producers and equipment manufacturers, toured the country in an effort to sell the franchise plan to exhibitors and at the same time increase the Allied membership. Effort was directed primarily toward securing the membership of already existing state organizations. In some instances such state groups called meetings for the purpose of deciding whether or not to join Allied. At

<sup>6</sup> Section 21.

these meetings opinion was divided; a number of objections to affiliation with Allied were raised. For example, there were already too many exhibitor betterment associations. The existing national associations were satisfactory. Producers were planning to help the independent and the small-town theater. In other cases the transfer of allegiance from the Motion Picture Theater Owners Association was accomplished by acclaim, only the affiliated theaters remaining to carry on with the already established local and national association. Because of the large number of affiliated theaters in each section of the country there were but few instances where a transfer of allegiance to Allied States, or the recruiting of a new regional group, eliminated entirely a regional association of the Motion Picture Theater Owners Association. On the whole, the results of the campaign were satisfactory. By January, 1930, 34 regional organizations, whose combined memberships comprised a large majority of the independent exhibitors in the United States, applied and were admitted to the association. The officials in charge had reason to believe that country-wide representation would be forthcoming in the near future. It was believed also that the future of the franchise plan was promising; one of the cooperating producers reported the sale of over 2,000 contracts, the total value of which was in excess of \$32,000,000 for a period of five years. Subsequent experience with the franchise, however, has not been satisfactory, and it is doubtful whether the agreement is at present being used to any great extent even by those exhibitors who originally accepted the contract.

Several months after the organization of the Allied States Association, the Standard Exhibition Contract as used, and in particular the provisions for compulsory arbitration, were declared in restraint of trade by a decree of the district court of New York. Inasmuch as the decree disrupted a common practice in the industry, the presiding judge suggested a conference of the several branches of the industry, the object of which was to derive a new motion picture contract and a



form of arbitration that would be satisfactory to all parties involved, including the government. Since affiliated theaters were not especially concerned either with arbitration or with the contents of a standard contract, the problem was of concern primarily to the producers in their relations with independent exhibitors. Naturally, producers would not find it difficult to deal with the Motion Picture Theater Owners Association, the membership of which in the latter part of 1929 was comprised largely of producer-controlled theater chains. The activity of the Allied States Association, however, presented an entirely different problem.

As a matter of expediency a consolidation of the two exhibitors' associations was proposed. The Allied States Association favored a single organization. Accordingly, the first of a series of joint conferences of the several branches of the motion picture industry was called in late December, 1929, for the purpose of effecting an equitable and legal settlement of the problems involved. These conferences are known as the 5-5-5 conferences.<sup>7</sup>

For the good of the industry as a whole and particularly for the protection of the interests of the independent exhibitor, a strong national organization, devoted to the welfare of the unaffiliated motion picture theater owners, is distinctly desirable. Such an organization, which should stimulate fair competition between the independent and the chain theaters, ought to create a condition favorable to more efficient operation of both, and to a more ready recognition of the wishes and needs of the theatergoing public. Where an industry has become as thoroughly dependent upon public interest as has this industry, and particularly where forms of public regulation are lacking, experience has indicated that it is dangerous for control to center unduly in the hands of a limited number of persons or companies.

Not only is this true now but it was true also in 1929. An association of independent exhibitors was desirable then, and there was reason to believe that such an organization

<sup>7</sup> See pp. 291-294.

would achieve success. The fact that the box office receipts of unaffiliated theaters represented a minority percentage of the total box office receipts for all theaters does not warrant a conclusion that such theaters were unimportant or that they would not continue to be a factor of outstanding significance in the industry. Data are not as yet conclusive, furthermore, that the independent theater must operate at an expense substantially greater than that of affiliated theaters. Finally, simply because success had not always resulted from past efforts, one is not justified in concluding that renewed attempts under different conditions and with capable leadership would be equally disastrous.

EXHIBIT 33

*Distribution of Theater Operating Expenses\**

Location: Massachusetts. Seats: 2,000. Admission: 40c to 50c.

Number of program changes per week: 2

Single or double feature: Double feature

Chain or independent: Independent

Gross Box Office per week	100%	
	1931	1930

Expenses (in per cent of Total Box Office Receipts)

1. Entertainment

- |  |       |
|--|-------|
| a. Film rental   | 33.3% |
| b. Other entertainment (orchestra,<br>stage shows, etc.) | ..... |

*Total Entertainment*

33.3%	31.4%
-------	-------

2. Advertising and Publicity

3.3	4.0
-----	-----

3. Salaries

- |   |      |
|---|------|
| a. House salaries (ushers, doormen,<br>janitor, etc.) | 10.0 |
| b. Projectionists                                     | 5.0  |
| c. Administration (manager, asst. mgr.)               | 3.3  |

*Total Salaries*

18.3	16.0
------	------

4. Occupancy Expense

- |  |      |
|--|------|
| a. Heat, light, power  | 2.5  |
| b. Rent (estimated if house is owned)                                | 15.0 |
| c. Taxes   | 6.9  |
| d. Insurance   | 0.9  |
| e. Depreciation and repairs  | 3.2  |
| f. Miscellaneous (telephone, water,<br>miscellaneous supplies, etc.) | 2.0  |

*Total*

30.5	25.7
------	------

85.4%	77.1%
-------	-------

\* See also *Motion Picture Herald*, April 29, 1933, p. 11.

Such success as Allied has achieved has been the result of a number of factors. Able, independent leadership was absolutely essential, both during the promotional period and for the subsequent guidance of the association. A substantial centralization of authority was desirable, even though criticism would inevitably arise sooner or later in consequence. The continued success of the association was dependent upon the obtaining of very tangible results; mere promises and excuses would lead to disintegration. In this connection, too, it is possible that the chief reliance must be upon economic and financial results rather than upon legislative or even judicial action. The obtaining of the so-called Allied States Franchise was an achievement of the sort that augured well for member support. The aggressive action on the problem of interchangeability was doubtless not without its effect upon the morale of the members of the Allied States Association, on the one hand, and upon producer-distributors on the other, although the subsequent decisions of the latter probably have been influenced by other considerations as well. The partially successful boycott of compulsory arbitration by the members of the Allied States was another tangible result of the cooperative action.

Several additional points should be considered. One of these is the extent to which the association has controlled its members. It would appear that no real control over the members exists, nor is there any way in which the members can be compelled to abide by decisions made or to follow recommendations offered. The effectiveness of any control is rendered difficult by the fact that an intermediary organization lies between the Allied States Association, on the one hand, and the individual theater manager, on the other. How far loyalty can be retained under adverse circumstances, and how far a keen appreciation of the unfortunate results which followed a weakening of similar organizations in the past may prove effective in retaining the desired loyalty, are questions which only time can answer.

Another question concerns the action which should be

taken by the Allied States Association on the issue of consolidation with the Motion Picture Theater Owners Association. A number of distinct advantages might well result from thus securing a unified front of all exhibitor interests. On such questions as those of taxation, arbitration, interchangeability, and censorship, a single national organization would be desirable. However, on such problems as these, wherein the interests of affiliated and independent theaters are likely to be common in any event, it is probable that united cooperative action could, in most instances, be secured without effecting actual corporate fusion. Beyond these questions there exist very fundamental issues on which the interests of the affiliated theater and those of the independent theater are almost certain to be diverse. The question of protection might well constitute such an issue. Equally fundamental is the problem of securing the insurance of an adequate supply of pictures. In order to deal with these problems, it would be an excellent thing for the exhibitors of the country to establish a single organization.

Up to the present, however, no attempt to consolidate these two outstanding exhibitors' organizations seems to have achieved any measure of success. When it is borne in mind that the Hays Organization members are said to be paying an admitted 90% of the Motion Picture Theater Owners Association's expenses, it is quite clear that the influence of the chain theaters predominates in that organization. There are other questions involved. For example, there was an issue as to whether or not the Hays group would be willing to finance an expansion which concerned taking over from Allied States the obligations involved in the salaries to Mr. Myers and certain of his assistants. Since the early part of 1931, not much has been heard about consolidation; at that time it was again maintained that financial considerations were chiefly responsible for the collapse of the proposed merger.

Another factor involved in the future of Allied States also concerns financial considerations. The organization



fought a long battle, particularly in Chicago, against the demands of the labor forces who were insisting upon a general use of two union operators for each booth and resisting reduction in the wages of operators. The association, at least in Chicago, won a distinct victory, a victory which it is claimed by W. A. Steffes should save the theater owners in Chicago \$1,500,000. Just how much this victory cost Allied States in terms of money is not clear, but it must have been a very substantial amount.

Another heavy expense to which Allied States was put was the loss alleged to have been incurred in connection with Allied's newsreel. Actually this newsreel consisted of nine issues. The idea was that a very large number of Allied members would agree to take the newsreel under conditions which practically gave them the service gratis, the cost of the reel being covered by the contributions made by various advertisers who supported it. This sponsored newsreel, however, did not gain popularity. Various possible explanations suggest themselves. The general reaction against any form of sponsored advertising doubtless was a considerable factor. The large number of commercial newsreels in the field gave to the exhibitor substantial choice and under competitive conditions which insured him a very reasonable expenditure for this item. Whatever the reasons, the net result appears to be definite. Allied's newsreel was not a success, and it has been estimated that it entailed a loss of over \$100,000 to the treasury of the association.<sup>8</sup>

Both the Motion Picture Theater Owners Association and Allied States have also been subjected to considerable criticism on the ground that the state associations have suffered at the hands of legislatures defeat after defeat which the

<sup>8</sup> According to Abram F. Myers (*The Film Daily Year Book 1932*, p. 532), the project "was abandoned, (a) because certain producers who had first brought advertising to the screen, abandoned the practice and made it unnecessary for the independent theater owners to engage in the practice as a measure of self-defense; and (b) because insufficient advertising of a kind which the leaders of Allied deemed appropriate for the screen was available to support the enterprise."

national bodies did not avert. Whether these defeats resulted from the fact that the national bodies were too cumbersome to meet local situations either promptly or effectively, or were too busily engaged in conducting fights in other localities, is a matter of individual judgment. Two instances, as reported in the trade papers, may be cited as cases in point. In New York State ineffectual organization was held by many exhibitors as responsible for failure to attain desired ends in the state legislature in 1931. "Albany, the seat of New York lobby activities, has been completely uncovered. . . . Buffalo and greater New York have kept on but have been functioning away from each other. . . . Under the reorganizing plans each zone in New York will appoint two representatives; the six men will elect a chairman; thereafter in the event of necessity to call a conclave seven men will be empowered to act for the entire state." In Detroit: "A long list of grievances by the local Detroit Exhibitors Group part of Allied against the State Association was not brought before the delegates. The Group charged mismanagement and inefficiencies in the conduct of affairs of the State Association. . . . However, Group members announced they would pay no more dues and would drop out of the Association, contributing financially only when Allied needed help in fighting for protective measures and against legislation."

All of this suggests that the problems confronting exhibitors' associations are many, varied, and complicated. As with trade associations in other fields, to render the organization a success requires a great deal of diplomacy as well as clear thinking and executive ability. There is much justification for attacking evils as they exist in the minds of members. The correction of abuses is a laudable ambition. Allied States has gone a long way in vigorously attacking these problems. Not for a moment should one minimize the significance of this line of attack. Yet equally it must be borne in mind that no association can altogether justify itself so long as it is purely a defensive organization. Allied States

has, it is true, undertaken to offer constructive suggestions. One does not need to approve all these suggestions in order to commend the attitude assumed. More and more must attention be given to problems of theater management having to do with accounting, personnel, local advertising, etc. Many persons would consider these problems of even greater importance than securing low prices on films or of carrying the fight on protection to a point of mutual exhaustion. Since all these individual questions are treated more thoroughly elsewhere in this volume, it is needless to discuss them at this point. The significant thought now is that a remedy for the conditions which cause unsatisfactory practices is necessary before the practices themselves can be eliminated. This is said, furthermore, with the full recognition of the fact that their abolition may have to precede the substitution of something better.

A type of exhibitor organization which differs from such associations as Allied States, principally in that its sole purpose is the solution of one specific problem, is to be found in a number of cooperative buying organizations. In an effort to obtain for themselves some of the advantages which they felt chain theaters possessed by virtue of their size, independent exhibitors have made numerous attempts to organize such cooperative associations, designed particularly for the purpose of buying films to better advantage. Undoubtedly two specific objectives were in mind: The first was the desire to obtain at lower prices such pictures as they did get; the second, to force distributors to give them better terms, particularly with respect to protection. Not infrequently exhibitors combined these two objectives, feeling that the primary reason that chain theaters secured prior-run rights was that, with their larger buying power, they could outbid the smaller theaters. The cooperatives sought through consolidation of their buying power to match the chain theaters in this regard. Other incidental advantages, such as those to be obtained from the cooperative buying of supplies and the protection of legislative interests, also were

sought through cooperative associations, but doubtless the reasons indicated were the primary ones.

As has been indicated, the problem of protection is not so simple as is sometimes suggested. There is no doubt that theaters having prior-run rights do pay more for the privilege. It is entirely proper that they should do so since there is an actual financial advantage, both in box office receipts and in prestige, in being able to exhibit a picture early. At the same time, the right to an early run is not based entirely upon financial ability to pay a higher price. For obvious reasons a theater connected with a producer-distributor chain is likely to get the pictures of its own company sooner than any outsider would get them, quite irrespective of the price which the outsider might be willing to pay. Furthermore, any theater in that chain stands a very good chance of obtaining those pictures ahead of any theater in any other chain. Although this is not always true as a matter of fact, it is nevertheless true that the tendency does exist. Again, as a result of the bargaining which goes on between the executives of chains at the time pictures are originally purchased by them, a theater belonging to one producer-distributor chain is likely to get prior-run rights on pictures produced by some other producer-distributor ahead of any independent group.<sup>9</sup> For these various reasons, it appears that cooperative buying groups cannot reasonably expect to obtain any very substantial benefits in the way of better protection rights. The experiences of such organizations as the Independent Motion Picture Exhibitors Association, Incorporated, a cooperative buying association organized in 1928 by independent exhibitors of Brooklyn and New York, and the Exhibitors Co-Operative, Limited, of Toronto, now a part of Associated Theaters, Limited, indicate the impossibility of accomplishing anything in this direction.

It is entirely possible, at least in theory, for cooperative buying groups to obtain somewhat better prices than those

<sup>9</sup> See pp. 72-75.



secured by individual exhibitors. Actually, cooperative buying groups among exhibitors in this country have not proved successful. In view of this situation it is probably not worth while to devote any considerable attention to the form of organization adopted by these various organizations.<sup>10</sup> Aside from the two illustrations already indicated, various other attempts to form cooperative groups have been undertaken. The Nebraska-Iowa Exhibitors, for example, undertook to work out at one time a collective buying of films and supplies. Various attempts have been made in the Chicago area to accomplish the same purpose, all proving, generally speaking, failures.

The reasons underlying the lack of success attendant upon these efforts are numerous. Doubtless one of the most important reasons was the refusal on the part of certain distributors, whose product was of very high quality, to deal with the associations on any terms. In other instances, distributors made their prices so high that the associations could not afford to accept them. Ordinarily the attitude of the members of the associations necessitated individual contracts and prices, rather than a group contract, which weakened the position of the association in more respects than one. In some instances, the members were unwilling to trust those responsible for buying. This proved to be the case with the Independent Motion Picture Exhibitors Association, Incorporated, for example. It was also true with at least one of the Chicago pools, which was dominated by James Coston. The fact that Mr. Coston himself was an exhibitor and later became affiliated with Warner Brothers weakened his influence and made him subject to criticism quite irrespective of how fair and impartial he was in reality. Actually in this particular area, the Cook County District in Illinois, practically every one of the 400 or more theaters was being booked through a central buying bureau. By the

<sup>10</sup> See *Motion Pictures* by Howard T. Lewis, Harvard Business Reports, Vol. 8, pp. 13, 609, and 616.

end of 1931, however, it appeared that the central buying of films had become the exception rather than the rule. The exhibitor maintained in many instances that he could get a price as good as or better than the central buyer regardless of whether the central buyer was a theater owner or not. The exhibitor may have been wrong in his feeling that "a man arguing for his own livelihood does a better job of it than an outsider", but his belief that he could do so undermined his cooperative spirit and made him quicker to withdraw. Again, exhibitors were extremely critical of the alleged practice indulged in by cooperative film buyers of playing one house against another in order to compel exchanges to meet their terms. In some cases it was said that the exhibitors found that the buyer, merely because he had had a quarrel with some exchange member, had not secured certain product for the exhibitors. Then, too, some exhibitors were convinced in their own minds that it was inherently impossible for one man to buy pictures for theaters in competing territories without favoring one theater or another. At the same time it must be added that the exhibitors themselves very frequently were responsible for the break-up of the associations. Some refused to deal fairly with the association in indicating the prices they were willing to pay; in other cases they refused to buy any pictures from certain distributors, who were in their turn quite willing to deal with the cooperative group. How far these conditions may have been intensified by the depression is problematical. There seems to be little reason to doubt that while unsatisfactory business conditions have tended to weaken the associations, the real reason for their failure lies much deeper.

An apparent exception to the long list of failures is to be noted in the case of the Exhibitors Co-Operative, Limited, of Toronto. Several distinctive features appear in the situation presented here as contrasted, for example, with those existing in the New York City and Brooklyn areas. Chain theater competition has been less keen in Toronto. Moreover, if the distributors were to realize anything approach-

ing complete coverage, the independent outlets in this instance were necessary. It may be noted also that the organization was effected before the large distributor groups had achieved a position of predominance in this area. An interesting provision in the case of the Exhibitors Co-Operative, Limited, was that which permitted any theater in the Dominion to affiliate. If this provision be really adhered to, the way is left open to subsequent control of the association by producer-distributor controlled interests. The experience of the First National Exhibitors Circuit, Incorporated, one of the earliest cooperative organizations in this country, indicated that it was necessary to protect a cooperative association specifically against the acquisition of such control. It is also to be noted particularly that, while the Exhibitors Co-Operative was apparently successful in obtaining a reduction in average film rentals, it was unable to secure any satisfactory adjustment in the matter of protection.

The Exhibitors Co-Operative subsequently merged with another buying association, the Community Theaters of Canada, Limited, to form the Associated Theaters, Limited, which claims a membership of over 70. In view of this reorganization and of the unsuccessful attempts of other buying organizations, the future of this association in Toronto is to be watched with a great deal of interest.

In this discussion of the problems of the independent exhibitor, consideration may well be given to the problem of the exhibition of two feature pictures on a program. While it is true that this is a problem which confronts chain theaters as well as independent houses, the double feature has been used so often by the smaller independent theaters as a means of competing with de luxe chain houses that it seems logical to treat the problem at this point.

For a good many years exhibitors in the New England territory have followed the practice of exhibiting two features at each performance. The practice developed in that section as the result of an effort on the part of certain exhibitors to protect their competitive position at a time when

de luxe and semi de luxe houses were making their appearance.<sup>11</sup> In an effort to overcome the attractiveness of these larger and more comfortable theaters, the exhibitors at no increase in admission offered to the public two feature pictures instead of one. This practice has become firmly entrenched in this particular territory; until recently it has not been used elsewhere. During the past year or two, however, the so-called double feature problem has made its appearance in many sections of the United States and has raised some very serious questions.

The reason for the extension of the double feature as a common practice is generally believed to be found in the competitive situation in those areas. In Chicago the protection problem has been an extremely sore point. There the Balaban and Katz theaters have secured unusual protection rights. The lengthy first-run protection granted to this chain and similar houses elsewhere has created a situation which many exhibitors feel can be met only by the showing of double features. It is their hope that a two-for-one policy may prove a greater attraction than a new picture.

There are, of course, other reasons. It is contended by some that block booking has contributed to this practice. The argument is that block booking has a natural consequence of compelling exhibitors to overbuy.<sup>12</sup> This means that at the end of any season there are a substantial number of unplayed pictures. Finding themselves unable to avoid their contractual obligations with respect to these pictures, exhibitors have taken care of the excess number by using two pictures at a performance when ordinarily they would show but one. Just how far this may be a contributing cause is not clear. Unless block booking is more rigorously enforced than formerly, it would seem as though the use of double features as a solution to overbuying would have been instituted long before now. On the other hand, of course, in so far as there

<sup>11</sup> See *Harvard Business Review*, July, 1932, "Double Features in Motion-picture Exhibition," by Edward R. Beach, pp. 505-515, especially p. 506.

<sup>12</sup> See Chapter V.



is a tendency to extend the run of pictures in the first-run theaters beyond the length of time which such exhibition averaged five years ago, the extended first runs would obviously create difficulties for subsequent runs more serious than then existed.

Some exhibitors attribute the double feature policy to the reduced quality and length of many recent feature pictures. It is their feeling that a program comprised of only one feature is quite unsatisfactory if that feature is a product of short-run time or of inferior quality. In consequence, quality programs have given way to quantity programs. The validity of this explanation, while theoretically perfectly sound, depends largely upon one's judgment as to whether or not the product is any worse at present than it was some years ago. There are a great many people, at any rate, who are quite willing to affirm that it certainly is no better. With a product which is quite ordinary in its drawing power and with the depression prevailing, an increase of the amount of footage offered with no increase of the price of admission has seemed to be a solution.

It is probably true that the great majority of exhibitors and distributors are distinctly opposed to the practice.<sup>13</sup> It seems quite definitely true that the majority of theaters adopting the double feature policy have done so in a defensive spirit and very unwillingly. When the leading theaters in any community start "doubling", the rest of the exhibitors in that area conclude that they have only one of two steps left: to reduce the price or to increase the amount of commodity offered. Generally speaking, they have followed the latter practice, judging that it would be easier eventually to get back to the single feature program, in the meantime suffering the disadvantages of showing the double feature, than it would be to get back to the original admission price, particularly during a period of depression. Yet it is also true

<sup>13</sup> See *Exhibitors Herald World*, November 14 and 21, 1931.

It is reported that in Germany some attempts are being made to make double featuring illegal.

that a great many exhibitors have felt that a reduction in price levels is the better move. Of course, in some sections both the lower admission price and the double feature have appeared. In fact, in many key cities such as Cleveland, Detroit, St. Louis, and Toledo the price of admission has been dropped, in each case by a chain group. Loew, for example, initiated a distinct cut in Cleveland. In Detroit, Publix initiated reduced prices.

There is a very vital question involved in this problem of admission prices that cannot be wholly divorced from the problem of double featuring. Pictures have always been looked upon as inexpensive entertainment. If the price level of the country is generally to tend downward and is to remain on a lower level than formerly prevailed, there seems to be no reason to believe that theater admission prices can be maintained in the face of such decline. To maintain them at the former levels would have a distinct tendency to put the motion picture into the luxury class where it has never been. To do so would be bad policy. The industry has made tremendous profits in the past by following a policy of offering good, substantial entertainment at a price within the reach of everyone. Not only must motion picture entertainment be priced within the ability of individuals to pay, but it must compare favorably with anything else obtainable by the customer within the same price range. In the face of the extremely intensive advertising of the present day, the competition for the consumer's dollar becomes increasingly keen. Waiving any questions as to whether 60 cents or 75 cents is in itself too high, the fact remains that, if it was fair in a period of higher prices and costs, then it would appear to be too high if our price level is permanently to be lowered. The exhibitor will argue that he cannot reduce the price if the cost of his films remains as high as it formerly was, or even becomes higher; certainly he cannot do so if he shows two features unless the drawing power of the pictures is relatively increased. The facts probably are: first, that until the economy drive recently was launched in Hol-

lywood costs of production were substantially higher than they should have been; and, second, that the quality has not been improved to a point where the higher prices charged are justifiable. At the same time the exhibitor, like many another retailer, has been extremely obstinate about reducing his price to conform to new price levels. With all this said, there is still an open question as to whether or not the industry wishes to concentrate on substantially improving the quality of its pictures without particularly reducing the costs and hence the price charged the exhibitor for them. Thus, whether or not motion picture entertainment should be taken out of the class in which it has been and put into the luxury class is a question of policy for the industry to decide. It is sincerely to be hoped that this form of entertainment will remain moderate-priced entertainment. It is difficult to convince an impartial observer that, if the industry takes itself in hand and overcomes both inertia and the peculiar psychological slant of some of those in control, it cannot very distinctly improve the drawing power of its pictures, and by eliminating unnecessary waste still make a very fair profit.

Naturally the price reductions by which the circuit houses are tending to bring their scale down to the same level as subsequent-run theaters, either in the same situation or in near-by communities, are bound to cause some readjustments in prices in the neighborhood houses. Just how serious this may prove is yet to be seen. If the price of films paid by the exhibitor is reduced so that he can afford to reduce his admission prices, well and good; if not, and the independent neighborhood exhibitor feels that he must continue to charge the same admission price, then the issue becomes one of whether the neighborhood house appeals to its patrons primarily because of the lower price or primarily because it is convenient and the pictures are adapted to local demands.<sup>14</sup>

Returning to the specific question of showing double features, the dangers cited by the opponents of the practice are

<sup>14</sup> See p. 363.

several. We are for the moment concerned, not with the soundness of the criticisms, but rather with the character of the objections made. These may be cited as follows: (1) The possible extinction of the small independent theaters which adopted a policy of showing double features to attract patronage from the chain theaters, many of which are now themselves showing double features. (2) Degradation of the policies of first- and second-run houses into straight price competition—in other words, the general adoption of a two-for-the-price-of-one policy, thereby attaching to a theater a certain stigma from which it may be extremely difficult later for it to free itself. (3) Likelihood of triple featuring by independents. Actually some theaters have developed a triple feature program, and it is feared that this policy may be extended. (4) A reduction in rentals and underselling by competitor-distributors as an effort on the part of sales managers to get satisfactory contracts in double feature territories. (5) A forced reduction of production costs as a result of lower rentals and box office receipts, and a consequent lowering of the drawing power of pictures. (6) A substantial curtailment in the sale of short subjects, particularly comedies, travelogues, etc.

Although it must be said that some of the objections just cited cannot be taken very seriously, yet it is undoubtedly true that the double feature bill does not have very much to be said for it in the majority of theaters. Certain of the dangers in the long run ought not to prove serious; in fact, were it not for more fundamental considerations than these, the public as a whole might very well welcome the double feature. Thus, if the practice of showing two features compelled exhibitors to select pictures on a basis of the likes and dislikes of the majority of patrons in the particular community served by that theater, it might be a benefit. In other words, if instead of relying merely upon lower admission price or merely upon larger quantity of product, the exhibitor gave some serious consideration to his community's demands, he would then be forced to a far more careful



analysis of the basis for his box office appeal and would place the emphasis upon the product he has to sell rather than upon price or quantity. Restrictions upon his free choice of product would, of course, interfere, but the trend would certainly be in the right direction.

In another respect the public might gain from a policy of exhibiting two features. It should be repeated that there is no reason to believe that a reduction in the production costs of pictures necessarily implies less satisfactory pictures. The contrary might be true. It is ingenuity, imagination, and creative ability, not an unrestricted expenditure, that make a picture successful. If, therefore, double featuring resulted in reduced production costs, it might actually mean a better picture through forcing those responsible for production to pay more attention to the picture in the first place.

Unfortunately, there is another angle to the whole question. Much of the discussion concerning admission prices in their relation to double features has a bearing upon this whole problem. It would be distinctly unfortunate if motion pictures became merely mass or quantity standardized entertainment, with their chief drawing appeal the amount of footage projected on the screen which a patron received in return for his admission price. Yet, this is a direct result.

There is another serious objection to the double feature from the patron's point of view. There is no question that a very substantial number of patrons refuse to go to a double feature program because of the fact that, though they wish sincerely to see one of the pictures, they refuse to be bored by the other. In other words, the attractiveness of one feature is more than outweighed by the lack of appeal of the other. In some cases this is because an exhibitor shows a good picture along with a poor one, and in other cases it is because he runs on the same program two pictures—one of which appeals to a so-called "high-brow" audience and the other to quite another class of patrons. The necessity of seeing an undesirable picture in order to enjoy a desirable one also has a serious effect upon the attendance of children.

Very frequently parents are deterred from sending their children to a theater to see a very desirable picture by the fact that the exhibitor has with it another picture which, judged by any standards, is unsatisfactory for a child to see.

With respect to the market for short subjects, it is of course true that companies such as Educational Pictures, Incorporated, whose product consists exclusively of short subjects, are naturally hardest hit. Whereas with the single feature there is always a substantial place for the comedy as supplementing the feature, exhibitors feel that with double features neither is there the room for the additional attraction nor can they afford to pay for it. For the time being it appears that exchanges have very largely abandoned their attempts to tie in the short pictures with the features. It is not to be inferred, however, that with the abandonment of the general policy of tying the short subjects in with the features no room for the one-reel picture exists. While the use of short subjects of more than one reel has suffered apparently a substantial decline, exhibitors frequently are very willing to take on a one-reel picture to supplement their feature, making this short subject the newsreel, or in other cases a comedy in addition to the newsreel. The short subject is used by exhibitors to serve one of three purposes. In many cases the short picture is chosen to support the feature picture. For example, with such a picture as "Frankenstein" a comedy might well be run. In other cases exhibitors run with a feature picture a short subject which appeals to a different type of audience from that drawn in by the feature, with the idea of attracting both classes of audience. This motive has an unsound basis because, in the first place, people do not go into a theater to see short subjects, and, in the second place, the showing of two products which appeal to dissimilar types of patrons tends to lessen the interest of both classes of audience in the program as a whole. Then, occasionally an exhibitor takes advantage of a strong feature picture to unload a poor short subject.

This suggests at once an issue concerning the billing of a program by an exhibitor, relative particularly to his policy of showing short subjects. Exhibitors have in the past very generally sought what was termed a balanced program. This meant a program which contained a sufficient diversity of pictures to appeal to everybody. Surrounding such pictures as "Disraeli", they have shown repeatedly a program of short subjects entirely unsatisfactory to everyone. If one is to assume that the short subjects on a program really have any influence in attracting or repulsing a patron, such a policy cannot be substantially indorsed. Of course, if short subjects are mere fillers, if they are not to be advertised particularly, if they are run only because it is customary to have them or because the program must run so many minutes, then it makes no difference what the short subjects are. On the other hand, if such subjects do provide a really substantial part of the program, frequently occupying as much time as do the features, then it becomes quite another story. If all the discussion by distributors and exhibitors alike as to the wisdom of selecting short subjects with due regard to the feature is worth anything, then the question which must be considered is—What are the essential elements of a balanced program?

As a matter of fact, it is probably true that a well-balanced program is something quite different from that which is in the mind of many exhibitors and different from that which one sees at many theaters. The attempt to build up a program which will satisfy all comers is certainly open to very serious question. It is a good deal like the problems of a retailer who tries to carry in his stock everything from cheap, low-grade merchandise to high-priced and fashionable merchandise, in the hope that by such a policy he may get all possible types of customers. If there is any one thing that retailing experience has taught, it is that a store shall have a distinctive appeal directed toward distinct types of customers. It will lose some business by so doing, but it will

gain far more. Concentrated and directed effort brings results; dissipated efforts do not.

In the motion picture field this works two ways. The exhibitor has an advantage over the ordinary retail store in being able to vary his offerings from day to day, and he may therefore appeal to one segment of his market during one week and another segment the next week. He may even carry the policy a step further, as many exhibitors do, and appeal particularly to that class of patron which in his mind is the most desirable one to secure, disregarding the fact that by following such a policy, there are some patrons whom he may never attract at all. This is exactly what most retail stores try to do. But whether he tries to concentrate on one particular part of the market continuously or to concentrate on various segments of the market successively, it would appear to be sound policy to build up a program pointed definitely in one direction at any one time. That the alternative and all too common practice of trying to get everybody all the time never has been and never can be so successful as some people have believed is probably substantially true. In other words, if an exhibitor is to secure the maximum volume from double features, those features must be of substantially the same class. If he does not offer double features, then the "shorts" should be in harmony with the program leader and not at substantial variance with it in the hope that the program may attract persons not particularly interested in the feature.

While this question of program building is under consideration, there are some other things to which attention may be directed. Again referring to other fields, experience has indicated one thing very definitely: The independent retailer can successfully compete with the chain store. He cannot do it, however, by competing with the chain store on its own ground. In other words, if the independent retailer stresses service, delivery, telephone orders, credit, and assorted stocks, he may then expect to get his fair share of the community's business. It is only when the independent tries to



beat the chain store on its own ground that he suffers. Logic would suggest that the same argument applies to the motion picture field. If the neighborhood exhibitor tries to compete with the downtown or near-city theaters, he is following a dangerous policy. It is very doubtful that he can do it at all successfully, and he is well advised not to try it.

Before leaving the problems of the independent exhibitor, attention may be called briefly to the so-called "automatic theater". While this recent development is of interest in a number of other respects, it may be considered as a possible additional factor to be faced by some independent exhibitors in their efforts to maintain their competitive positions.

The automatic theater, as exemplified in the Trans-Lux venture, is an experiment instituted in an effort to reduce the cost of theater operation. The Trans-Lux theater is well known as the "daylight" theater, the picture being projected from behind the screen instead of in front of it. The theaters are small and are light enough so that no ushers are needed to escort patrons to their seats. A girl in a window presides over a turnstile which clocks the persons who enter and obviates the necessity for tickets. Since ushers are dispensed with, the entire operating force consists of not more than five or six persons at each shift. All these theaters thus far have exhibited only short subjects and in some cases have confined their offerings wholly to newsreels. The admission price is low, 25 cents being a common figure, and the program covers a period of perhaps an hour and a quarter in length. Several such theaters are being operated in New York City jointly by the Trans-Lux Picture Screen Corporation and the Radio-Keith-Orpheum Corporation. In some instances, consideration has been given to the establishment of these theaters in railway stations in several large centers of the country.

The advantages alleged for this type of theater are several. Experience seems to have indicated that at least in some instances people develop a very strong habit of dropping into these theaters with considerable regularity and the

theaters thus build up a substantial regularity of patronage. The extent of such patronage varies considerably with the location of the theater. The theaters in railway stations offer to patrons at low cost a comfortable and entertaining way of spending time while waiting for a train. The so-called "daylight" feature attracts many prospective patrons, mostly women, who do not care to attend unescorted a picture performance in a darkened house.

The movement also reflects a reaction against the terrific investment which many companies have in the past felt it necessary to make in opening a new theater. While there undoubtedly is a place for the very elaborate house, the upkeep on such houses is tremendous. In many cases it certainly is excessive and not warranted by the added appeal.<sup>15</sup> It again seems to be a reflection on the attempt to bolster up pictures that are not always satisfactory by an elaborateness of atmosphere or equipment. While it is of course perfectly true that a comfortable theater and clean surroundings are imperative, it is quite another thing to invest so much money in building a theater that the result is only a reduction in the net profit earned by the company.

Clearly the automatic theater should have a definite place, but it probably will never supplant the cinema as we now know it. Its possibilities are tremendous as offering an opportunity to develop patronage now quite untouched and also in offering quite as satisfactory entertainment under some other circumstances at a much lower cost to the patron.

<sup>15</sup> The construction of Radio City in New York is an exception to the trend away from building expensive, de luxe theaters.

## CHAPTER XI

### CHAIN THEATER CONTROL <sup>1</sup>

CONSIDERING the significant place which chain theaters have come to occupy in the field of exhibition, it is quite to be expected that the problems involved in the management of these chains should create difficulties of first importance. Unless there can be developed a practical and efficient system of management for chains of theaters, they cannot be expected to serve the purpose for which they were created. Within the past two or three years the managements of such chains have been put to a most severe test. The general business depression has put their managers on their mettle as it has those of every other business. Financial resources have frequently been strained to the utmost, particularly as a result of the rapid and at times undue expansion which took place before the fall of 1929. The test imposed by the conditions thus created has been rendered the more severe by virtue of the fact that for one reason or another a very large percentage of the films offered the public have been decidedly mediocre in character, so much so in fact that there may be real doubt as to whether the former level of box office receipts would have been maintained even had prosperity continued. In addition to these facts the very rapid expansion of chain theaters would have imposed a severe strain upon any system of management, however basically sound it may have been. This latter consideration is all the more significant in view of the fact that there has

<sup>1</sup> In this discussion of the problems of chain theater control, appreciation is given to Harold B. Franklin's *Motion Picture Theater Management*. (Doubleday, Doran & Company, Inc., New York, 1927.)

been by no means unanimity of opinion in the industry as to what system of management is ultimately likely to prove most satisfactory.

There is no need to review the factors which have been operating since 1920 to cause this very rapid development of theater chains.<sup>2</sup> Doubtless the mergers and consolidations of various firms in other lines of business suggested to those in the motion picture industry that here was a development which could be imitated; the entrance of certain large banking firms probably contributed also. In addition, the advent of synchronized sound and its promise of large profits; scarcity of sound reproduction equipment and the priority rights on installation offered to chains by electrical manufacturers; keen competition, often of a cut-throat character; the general belief that without theaters a producer-distributor organization was not economically complete; and a most unusual stock market condition were among the important factors which contributed to the growth of the national chains to the size which they had attained in 1931. Various methods were used to form these chains. In a majority of cases the units were acquired outright. In some cases stock ranging from 25% to 50% of the total outstanding stock was purchased. Other theaters were acquired under short- or long-time leases, and still others under management agreements. In the latter case, contracts were made with both property owners and theater operators, either individually or in combinations.

Practically all the major chains built a substantial number of their theaters. Some of these buildings housed only theaters, others included stores, and still others included offices or hotels, or both. In many instances the theaters were financed and controlled by subsidiary holding companies or specially formed real estate companies. In others, where the chains were not interested in owning the land or the building, the lessor often contracted to rent the land or the

<sup>2</sup> See pp. 16-20, 22-23.



building or both, either for a flat amount or on the basis of total paid admissions.

Of the chains owned by producers, some were incorporated as integral parts of their parent companies. Others were developed as wholly or partially owned subsidiaries, or as separate corporate entities, the stock of which was held in part or in total by the parent company. In some instances a combination of any or all of these methods was used. The chains were financed by the earnings of the parent companies, by the exchange of securities either under a guaranteed future price or on the basis of the market price as of a given date, through the issue of securities by a new or separate corporation, and by various other methods, including certain alleged unethical practices.

The task of forming these chains involved numerous difficult problems. Mention of only a few of these—choosing sites for theaters, financing theater construction, renting extra space in the theater buildings, settling legal questions—need be made to indicate the complexity of the whole task facing those who were responsible for the larger problems of management.

For a number of reasons, most of which are quite apparent, there has been created a rather chaotic condition in the chain theater field. Enough has been said already to make it clear that many producer-distributors had no uniform plan for their development of the exhibition field. Inadequate planning and short-sighted policies were the inevitable results. With some companies apparently the only plan that existed was a decision to buy theaters wherever they could be acquired. How many theaters could be operated profitably under any plan of management, whether the theaters best adapted to their use were large or small, whether or not they should be concentrated in any particular geographic area, why they should be purchased at all, were points on which there did not appear to be always a well-thought-out program.

All these factors combine to present a very difficult situa-

tion. The heterogeneous nature of these theaters was aggravated by the fact that they frequently were acquired at excessive prices during the period of inflation both in the motion picture industry and in industry in general, to say nothing of the difficulties encountered as a result of the entangled network of corporation relations which had developed. True, some of these difficulties had been removed and others rendered less acute before the effects of the depression were really felt. However, the managements in charge of the various chains, having passed through a period of mushroom growth and of prosperity, were hardly ready to adjust themselves to the task of meeting the severe test which that depression imposed.

An example of what may be considered an ill-advised expansion in this field is evidenced by the experience of the Universal Pictures Corporation. The company decided to follow a policy contrary to that adopted by most of its competitors and to build up a chain of medium-sized theaters in small suburban centers rather than attempt to acquire theaters in the large metropolitan centers. There were various arguments advanced for this policy. Thus it was said that other producer-distributors had in some places gained virtual control in most of the desirable theaters in these large centers. If the Universal Pictures Corporation were to begin building up a chain of theaters in similar locations, it would have to buy theaters in competition with those producer-distributors and as a result would probably find itself forced to pay exorbitant prices. Moreover, many large cities and towns were thought to be overseeded and the addition of another theater in these centers would aggravate an already bad situation. There were other reasons advanced. It was said that, for instance, should the company acquire theaters in the centers in which other producers had done so, it would find it difficult to secure for its theaters the feature pictures of other producers which would be required to complete its programs. Other producers having theaters serving the same localities would see to it that most of their pictures and cer-

tainly their best pictures would be shown by their own theaters, which would be given exclusive first-run rights and protection of several weeks over other exhibitors. In like manner the theaters of the Universal Pictures Corporation would demand exclusive rights for first showings of the company's pictures where such theaters were in the same location as those of competitors. This condition would prevent the sale of the Universal Pictures Corporation's films to competitive theaters.

If the company, on the other hand, were to adopt a program of acquiring most of the theaters for its chain in the smaller cities or towns, it would meet little competition from other producers who were building up chains of theaters and who had their interests centered for the most part on the larger theaters in the metropolitan cities. Thus the company might expect to acquire its theaters at more reasonable prices. It was believed that overseating was not so prevalent in the small urban centers as it was in some of the metropolitan cities and, since the company expected to buy more theaters than it would build and anticipated making very thorough surveys before going into any building project, there was little likelihood of the development of an over-seating problem of any importance. By buying theaters in communities which were not over-seated, the company would enhance its prospects of profitable theater operation. Judging from the results secured by other theater operators in such places, it seemed reasonable to anticipate a satisfactory profit in the operation of the company's theaters thus situated. With theaters situated in small urban centers where most of the competing theaters were independently owned and only a few were members of chains owned by large producer-distributors, the company would have no difficulty in securing the additional films which it would have to buy from other companies to complete the programs of such theaters.

If the company acquired theaters in the small urban centers, it not only would be establishing fixed outlets for its

own pictures in such centers but also would be placing itself in a position, since it would need outside pictures, to offer its theaters as outlets for the pictures of other producer-distributors, which for the most part had none of their own theaters in such places. Inasmuch as the company then would be a customer of one or more of the other producer-distributors, the executives of the Universal Pictures Corporation expected to have less difficulty in selling its pictures to them for use in their theaters.

However, if the company acquired most of its theaters in small urban centers, it would secure wide distribution through such outlets but would find it necessary to acquire a greater number of theaters to secure a given gross revenue from that distribution than from distribution through a group of larger theaters in metropolitan cities. Methods of acquiring control of theaters were varied; new theater buildings might be erected on land owned or leased by the company; old theater buildings might be purchased; or a part or an entire interest in a corporation owning or controlling a theater or chain of theaters might be acquired. As a result, the outlay of the company in each case would be different, so that it was impossible for the executives to estimate in any way the relative cost of a large number of small-town theaters as compared with the outlay for control of a smaller number of large theaters. If it decided to operate small theaters exclusively, the company definitely would lose the opportunities for advertising and exploitation which the operation of large theaters strategically located would present.

It is not clear that in the minds of the company there was a definitely outstanding reason why the company should have owned any theaters at all. The company indicated at first that it was interested in securing a steady outlet for its films. This would suggest that theaters were to be acquired largely as an aid to the production department. Again, the company suggested that the theaters were to be obtained primarily for bargaining purposes. Another reason given was that the



theaters would be of value in enabling the company to exploit its pictures more advantageously. Finally, the company suggested that the theaters were to be sought because it was believed that they would yield a profit in themselves.

If the object of theater ownership was to obtain exploitation, then the argument for the ownership of smaller neighborhood theaters is quite beside the point. Exploitation cannot be obtained in neighborhood theaters. While it is probable that the use of the theaters would serve as an added check on the type of pictures favored by the public, it does not appear that this was at any time a major object of the company.

The argument that the ownership of theaters would provide an element of bargaining strength has on the surface greater weight. It does not appear, however, that the experiment of this company in owning neighborhood theaters for the purpose of bargaining was a happy one. Three reasons perhaps may be advanced in explanation. First, assuming that a large amount of exploitation work had not been done, the value of Universal pictures to competitive distributors would be substantially less than it would have been if the Universal Pictures Corporation had controlled outstanding key theaters. Furthermore, the rentals obtained by such competitive distributors from the Universal Pictures Corporation would be substantially less in any event, since film rentals in neighborhood theaters were materially less than in the larger key theaters. Again, it must be remembered a very substantial number of subsequent-run houses were available to competitive distributors. In other words, these competitors were only incidentally dependent upon the Universal Pictures Corporation for their neighborhood distribution. The latter company, on the other hand, could not very well get along without the rentals obtained from the larger key theaters. These, in many cases, were owned by companies with which the Universal Pictures Corporation hoped to bargain. If one is to judge by the data given in the *Film Daily Year Book* for 1928, it would appear that at no time did the Universal

Pictures Corporation own more than 300 theaters. Assuming this very generous figure, and assuming further the very conservative estimate of 18,000 motion picture houses in the United States, it would appear that the corporation never controlled more than from 1% to 1½% of the theaters in the United States. These were neighborhood and not key theaters. It is clear, furthermore, that the number of controlled theaters was not, at that time at least, great enough to provide any very substantial outlet for the pictures of such a large producer as this company.

The whole experiment appears to have been inadequately thought out. The net result is that today the Universal Pictures Corporation has disposed of most of its theaters. Of those it still retains, the largest units are a 22% interest in the Schine Circuit in New York State and the Griffith group located chiefly in Texas and Oklahoma.

It were well, however, to turn from any further discussion of these considerations to the problem of management. The status of the national chains today is very difficult to determine since at this point, as at so many others, authentic facts do not seem to be available. One very reliable estimate of the number of theaters in operation in 1932 in this country places the figure at 18,000.<sup>3</sup> Others have placed the figure as high as 23,000. Of this number it may well be that from 16,000 to 18,000 operate at least six days a week and can legitimately claim to be classified as theaters. Manufacturers of sound equipment have estimated that approximately 12,000 houses have been wired for sound reproduction. Potentially, the market for sound films should range from 12,000 to approximately 15,000 theaters.<sup>4</sup>

<sup>3</sup> Estimate made by Dr. F. S. Irby, Associate Editor of *Electronics*. *The Film Daily, Year Book, 1932* estimates 18,715 as the total number of theaters in the United States, of which 4,589 are closed.

<sup>4</sup> Sidney R. Kent, now president of the Fox Film Corporation, stated in February, 1931, that "each sound picture has a possibility of 10,000 sales in the United States. A picture that is popular at the box office may sell to as many as 7,000 out of the 10,000 accounts. A picture that is not popular will be purchased by 1,200 to 1,400 accounts."

*The Motion Picture Herald*, April 4, 1931, estimated that exclusive of the

From the standpoint of control, there are two general types of chain theaters: those which are independently controlled and those controlled by producer-distributors. The independently controlled chains include regional and local groups, the local groups often being comprised of but few units per circuit. Neither independent chains nor independent unit theaters number many de luxe or important first-run houses. Geographically independent theaters are well diversified, but they predominate in the small communities. The second general class of chain theaters, those controlled by producer-distributors, includes practically all the major national organizations. It is with this class of theaters that we are concerned primarily. In 1931, there were six producer-affiliated theatrical chains; they were owned by the Paramount Publix Corporation, the Fox Film Corporation (this chain included the Fox Theaters and the Fox-West Coast Circuit), Warner Bros. Pictures, Inc., Loew's, Incorporated, the Radio-Keith-Orpheum Corporation, and the Universal Theaters Corporation.<sup>5</sup> Of the total number of theater accounts, it is estimated that 25% are affiliated theaters. It is believed by some within the industry that this percentage figure will be lowered in the next two or three years, partly because some of the chains are returning houses to local independent operation, and partly because there is an increase in the resumption of business by the independent theaters themselves.

theaters that could not be booked because of protection there were from 7,000 to 8,000 wired "sales possibilities" in the United States. Of this number the individually owned houses outnumbered those owned by the major circuits by 1,200. It was also estimated that there were from 3,500 to 4,000 individual accounts, this number including operators of 1, 2, or 3 theaters. An estimate, early in 1931, by the *Film Daily* in cooperation with the Film Boards of Trade indicated that there were, on January 1, 1931, 13,128 wired houses out of a total of 21,993 houses.

<sup>5</sup> The Hughes-Franklin Circuit of theaters, organized in 1931, gave promise of attaining major importance. Since its organization H. B. Franklin has withdrawn from the circuit.

The United Artists Corporation was interested in a number of theaters, some of which were wholly owned and others owned in partnership with the Paramount Publix Corporation. The latter company operated a number of the United Artists Corporation's theaters.

Affiliated Chain Theaters

Company	Number of Theaters
Paramount Publix Corporation .....	971
Fox Film Corporation * (includes Fox Theaters and the Fox-West Coast Circuit) .....	521
Warner Bros. Pictures, Inc. ....	529
Loew's, Incorporated ** .....	189
Radio-Keith-Orpheum Corporation .....	161
Universal Theaters Corporation .....	66

\* Theaters in Brooklyn, Manhattan, and Long Island which were formerly operated by Fox were taken over by the Skouras Bros. Circuit and Randforce Amusement Corporation in February, 1932.

\*\* Loew's, Incorporated, operates several theaters in association with United Artists Theater Circuit.

Source: *The Film Daily Year Book, 1932.*

Geographically, the theaters of the Paramount Publix Corporation, of Loew's, Incorporated, and of the Radio-Keith-Orpheum Corporation have the most complete national coverage. Publix theaters have relatively intense coverage, primarily in the South, in New England, and in the Chicago district. Fox theaters dominate the area west of the Mississippi River, having a practical monopoly on the West Coast. The Fox Film Corporation is also well represented in the Northwest and in metropolitan New York. Loew's, Incorporated, and the Radio-Keith-Orpheum Corporation are especially strong in New York City. Warner Bros. Pictures, Inc., has a virtual monopoly in the Philadelphia district and fairly strong representation in other sections of the country. Because of the necessity for intercorporate bookings, national coverage unless intense is not so important in the operation of chain theaters as is domination in a number of important centers.

From the standpoint of organization, although not all the national chains are identical in all respects, generally they are the same. With the exception of the Fox-West Coast Circuit, the home offices are located in New York City. The country is divided into divisions, districts, and local zones or cities. Groups do not always follow the same



geographical lines; instead, each circuit arranges its own groups to suit its particular needs. Thus, a chain dominating the Middle Atlantic states might have several divisions or districts within that area. On the other hand, another circuit with but few units in that area might combine them all in one division either as a separate entity or in combination with theaters situated in an adjoining territory.

After a company has faced these problems of expansion and has acquired its theaters, it then is confronted by the problems of theater management. One of the most important of these, and one to which due attention is not always given, is the securing of capable theater managers. Experience in other fields has indicated that it is likely to prove rather groundless to hope that a former owner of a store, consolidated into a chain, will prove to be a satisfactory operator of the unit under new management. The former owners frequently are in no mood to cooperate with new policies nor are they of the temperament which renders them capable of working well under the direction of someone else. There was no reason in this particular field to expect that, when a theater was purchased by a producer-distributor, the former owner would make a satisfactory manager of the theater. It is, of course, true that, if the former owner still maintains a substantial or controlling interest in the business, an additional incentive for cooperation is provided. But at the same time he is likely to be less willing to submit to dictation or interference. Experience seems to have pointed out here as elsewhere that the incentive is not adequate and that eventually both the chain executives and the individual owner himself are quite satisfied to part ways. In some chains outside the motion picture field it has been deemed wise policy to make it an invariable rule that the former owner must be replaced by someone else. These problems of personnel are among the most serious that any chain organization has to face. Yet it has been very seriously doubted whether those responsible for chain theater expansion were always fully aware either of just how serious this problem was likely to

prove, or of the experiences in other chain fields which might, had they been considered, have served as a caution and perhaps a guide.

The management of a national theater chain is a very difficult task. During the first stages <sup>6</sup> of chain development, the problem was not very complex; one or two efficient managers could supervise the activities of local or regional chains without much difficulty. Gradually, with the acquisition of more units and the tendency to reach into all sections of the country, the problem of operation became much more difficult, growing especially complex during the period of mushroom growth that followed the advent of synchronized sound.

Quite naturally the operators of these large chains which had sprung up very rapidly turned first to highly centralized forms of management. The belief was prevalent that motion picture theater operation could be made as mechanical as that of many of the chain grocery stores, and that substantial economies would result therefrom. There was a desire to profit from concentrated purchasing power both in tangible materials and in films. In addition, the usual chain operating economies were anticipated.

There were naturally other factors which tended to stimulate the development of centralized management. One of these was the lack of adequate dependable man power. With a personnel which could not be depended upon or which was considered incapable of exercising sound judgment, major executives assumed the responsibility for the direction of every move made by the theater employees within their organization. The degree of standardization which theater employees were presumed to perform was in some cases almost unbelievable to one not familiar with the facts.

There probably was some justification for this in a period

<sup>6</sup> The early vaudeville chains, namely the B. F. Keith Circuit, the Orpheum Circuit, and Loew's, Incorporated, had developed efficient management long before the motion picture chains made their appearance.

of transition. During such periods a larger measure of centralized control is defensible, at least up to the point where major policies are to be made and recognized. Experience in the chain theater field is not unique in this respect. Some of our largest retail establishments, such as Sears, Roebuck and Company, have encountered exactly the same problem and have suffered most severely from an attempt to recruit a large personnel quickly, with the result that they have attained a large number of untrained and inexperienced persons, unfamiliar with their stock and often not cooperative with respect to company problems. It is the experience of grocery chains also that centralization of control is quite possible of overemphasis. Certainly the theater field was not unique in this respect, and probably stress upon centralization was the natural thing to expect.

In an attempt to meet this situation, some companies, such as Paramount Publix, have established theater managers' training schools. In general the managers for theaters of chain units have been recruited from the company's own employees and from rival theater-operating companies. When it became apparent that these sources were incapable of supplying a sufficient number of the proper type of men, the establishment of a theater managers' training school was proposed as a remedy. The Publix Theater Managers Training School was established in 1925, students being recruited from various sources including industries, colleges, and, in a few outstanding cases, from the company itself. The session lasted for six months. In addition to payment of a tuition fee, students were required to pay all their expenses. In 1929, however, the tuition fee was discontinued, and each student received \$25 a week during his enrollment, the duration of the course being reduced to three months.

Around the issue of whether or not employees can be trained in such a school has centered more or less debate. Several executives with long experience in the show business oppose the establishment of a managers' training school. It is their contention that showmanship cannot be formally

taught. It has been their experience that good showmen are those gifted individuals whose native ability enables them to sense entertainment values and successful methods of exploitation. Those who have been unusually successful in the field of showmanship declare themselves without set principles or theories. They attribute their ability to a kind of sixth sense. It is maintained also that the practical side of showmanship cannot be acquired theoretically, that only experience can impart the necessary knowledge. Furthermore, because methods of showmanship change frequently, theories based on present and past practices are of little value in judging problems of the future. Those opposed to schools favor training future managers in theaters wherein they will come into contact with the actual problems of operation.

Those in favor of a managerial training school emphasize the importance of theater managers in particular, because it is through them that the organization comes into direct contact with the public. In a training school, prospective managers are under close observation; hence judgment can be formed as to their capabilities, personalities, and habits. Before a manager is placed in charge of a company's expensive theatrical equipment, is made responsible for funds, or is placed in a position to influence public goodwill, the corporation may know whether or not he is capable of assuming these responsibilities. Furthermore, the school is likely to attract a steady supply of young men of promise to the company.

These persons point out that without a school a company is forced to train managers in its theaters. While this method may produce an immediate practical knowledge of some of the more common problems of theater operation, it does not cover the broad field of showmanship. A candidate selected as a possible theater manager, unless he possesses previous experience, is likely to be assigned as assistant manager in the theater selected for his training. While some theater managers are excellent showmen, many of them are poor teachers. Furthermore, those possessing the capacity to



teach usually have neither the time nor the inclination to assist in training a student. Training under such a system is spasmodic and not uniform. Each manager, for example, might emphasize his favorite phase of theater operation to the exclusion of others, regardless of their importance.

Training in this manner is further limited by the type of theater to which a prospective manager is assigned. Many of the smaller theaters do not maintain orchestras and stage shows such as are presented by the de luxe theaters. The de luxe theaters, on the other hand, do not furnish the opportunity for close contact with theater patrons. It is difficult without great expense to transfer students to and from the various theaters in order to provide them with experience in the management of all types of theaters.

It is believed by some that a school, in addition to solving these difficulties, provides the most comprehensive form of training possible. The curriculum for a school may be studied carefully and arranged to include any desired subject. Each subject may be allocated the amount of time that its importance warrants. By combining the use of lectures, textbooks, problems, written reports, and some supervised work in theaters, all types of subjects may be covered effectively. By locating such a school in New York City the student may benefit by observing the methods of America's leading showmen.

Moreover, it is held, a school provides instruction on certain phases of theater operation which ordinarily cannot be gained through practical experience. A manager actually engaged in the operation of a theater can acquire such information only at the expense of great effort either by delving into books or by tedious inquiry. For example, a knowledge of theatrical mechanical equipment is subject to these limitations. The cooling, heating, ventilating, projection and sound reproducing equipment, all require the supervision of the theater manager, but in many instances they are of such a complicated nature that no amount of ordinary observation would teach anything about their construction or operation.

Furthermore, union regulations restrict any attempt that might be made to learn about such equipment. The regulation of the projectionists' union, for instance, prohibits the presence of the manager in the projection room. Motion picture theater law is another field in which few men will acquire knowledge while engaged in the tasks of theater operation, unless they are actually confronted with legal difficulties.

Enthusiasm and the ability to enthuse others are among the principal requisites for all successful showmanship. While a few exceptional individuals can stir enthusiasm within themselves and maintain it, a majority acquire it by contact with others interested in the same type of work. It is believed that a group of new men trained at a school under the direction and inspiration of a combination showman and teacher can be fired with more enthusiasm for their work than could be acquired in the same length of time in any other manner. The existence of schools also might act as an incentive to the older managers to keep abreast of the latest development.

Attention may be called to such institutions as the Motion Picture Theater Managers Institute, located in Elmira, New York, which provides a course of training for theater managers. RKO also took a step in the direction of some form of training by calling 24 former college men to New York in June, 1931. These young men were placed in RKO houses throughout the country as assistant managers and treasurers, for the purpose of providing managers for new RKO houses which it was proposed to open, as well as to better qualify them for promotion.

While this problem of securing satisfactory operators for their theaters has received careful consideration by some of the more important producers, many of the larger problems of chain theater operation have been seriously neglected. This failure is to be explained by a number of factors. During the period that followed the introduction of sound films, theater operation, although not satisfactory, did not con-

stitute an issue of immediate importance. The public apparently attended the theaters in large numbers regardless of the quality of the film shown, provided that it was an "all talkie". Attendance was increased from 50% to 100%; midnight shows and the showing of from five to seven programs daily with from three to five full houses were not uncommon. Individual theaters and small circuits acquired by the large chains returned substantial profits with little or no promotional effort.

The depression which began with the market crash of October, 1929, did not at first affect motion picture theater attendance. However, box office receipts began to decrease later, in some cases starting in the late winter of 1930, and in others not until the middle of 1931. This decrease, while explainable partly because of the depression, was caused largely by an influx of low-quality pictures and by the diminishing novelty value of sound films. As has been indicated, at first the decline was not taken seriously by motion picture executives, many of whom had become overconfident as a result of the period of unprecedented prosperity through which they had just passed. Before long, however, it became apparent that, while total box office receipts had decreased considerably, pictures of more than average merit still filled the theaters in all sections of the country.

Confronted with these conditions, the circuits first demanded higher-quality films. Producers in turn expanded their budgets and tried to improve the quality of their product. Satisfactory results, however, were not easily attained. Producers' reliance on the novelty of sound to carry their pictures had seemed to lessen their ability to make pictures that would succeed on their own merits. It was found, moreover, that, since sound films required a new technique, the elaborate devices in which producers had made large investments and which had contributed materially to the success of silent films were not so adaptable to sound pictures.

Having asked their affiliated producers for improved product, the chains turned to an analysis of their own organ-

izations. With losses ranging upward to \$500,000 per week in a single chain, it became imperative to take steps to effect savings wherever possible and to make every effort to increase theater attendance. Consideration was given to the reduction of operating charges, and as a result of experimentations in this respect substantial savings were effected. Programs were bolstered by various types of stage presentations where justified, and an effort was made to devise more effective exploitation. Of singular importance was the attempt made by two of the chains to classify pictures according to types of audience. Almost every chain made an attempt to acquire circuit rights for individual pictures and franchise agreements covering producers' entire outputs. Only the best pictures, however, were shown.

Despite these devices and an apparent realization on the part of circuit executives that the public could be induced to attend theaters only when the pictures were interesting and of high quality, chains operating on a national scale failed to earn adequate returns on their investments. A number of factors contributed to this lack of success. As has been said, in many cases it is likely that unreasonably high prices had been paid for acquired theaters, and the costs of constructing new theaters had been excessive. Many centers and districts were overseeded. In a very large number of theaters in which high investments had been placed, it was thought necessary to present elaborate programs; these programs naturally increased operating costs. In the acquisition of theaters the national chains had been forced to purchase many small and undesirable theaters, which were, as a rule, units of circuits taken over as a whole. In many instances, the chains were unable to operate these theaters profitably. Another important reason for the failure of chains to operate at a profit was the increased cost of theater operation which came with the advent of sound. This increase resulted from amortization and service charges on sound equipment, and from increased rentals charged for sound films, both features and short subjects.



In addition, there seemed to be a lack of men with adequate managerial ability;<sup>7</sup> moreover, those who had the ability to operate their theaters profitably were excessively restricted by the limitations placed on them by the home office. Then too, the large chains seemed to be unable to compete favorably with independent operators of small houses, especially second- and subsequent-run theaters. Finally, because of the centralized forms of management there was too much standardization in product, in personnel, and in plan of operation.

Within the trade, various opinions have been advanced on the subject of chain theater operation. *Harrison's Reports*, January 31, 1931, said in part as follows:

When a theater is inducted into a chain, anywhere from three hundred to thousands of dollars a week are added to the operation as "Home Office Overhead". The operating booth costs the chain not less than twice as much to operate as it did the individual owner, and in many cases as high as five times as much. The chain owner is subject to Union dictatorship that no independent has ever been subjected to. If the chain operator refuses to accept the Union's demands, the projectionists are pulled out of the booths of all the theaters owned by the chains, no matter in how many states such theaters are.

. . . . the character and ability of the manager contribute greatly to the success of the theater. In fact, there is no business in the world where the personality of the manager counts as much as it does in the theater business. People go to a picture theater to amuse themselves. And a bright, cheerful, and happy-looking manager is part of the "show".

An equal handicap to the chain theater management comes from the fact that the theater has to show every picture that is owned either by the company, or by the distributor with whom the company has entered a reciprocal buying agreement—to run each other's films. No matter how poor may be the pictures, the manager cannot reject them as can the independent manager. Very often the independent manager pays for a film and lays it on the shelf rather than show

<sup>7</sup> *Variety*, February 4, 1931, said in part as follows:

A survey by an outstanding chain operator indicated that a majority of approximately 3,000 house managers employed by major circuits are only 50% efficient. The circuits are confronted with a man-power problem. That this efficiency has not been raised is the most vexing issue; the loss in efficiency has been estimated to range from 15% to 20%.

it to his customer when the film is either boresome, demoralizing, as in the case of crook plays, or injurious to the morals of the young. This is a privilege the chain manager does not enjoy. And it is a great detriment to the successful operation of the theater, for the pictures made by his company are produced to suit key-center theaters, where people are not so particular about the moral caliber of the stories. Although such pictures are unsuitable for small-town theaters, the chain manager has to run them. He cannot reject them; he exercises no control over the policy of the company.

Chain operation has done harm to the business; it has created an antagonistic feeling towards the industry. This has been reflected in the numerous bills introduced in the legislative bodies of the different states. Some of such bills call for a tax of 10% on the gross receipts. The Hays Organization seeks to weld the independent exhibitors with the affiliated exhibitors so that united these may fight adverse legislation. But he would not succeed in staving off such legislation even if he were to accomplish his purpose, for the cause is such that it cannot be easily overcome. There are no longer, or at least there are left very few, exhibitors who know their Congressmen or their state law-makers well enough to call them "Bill", or "Jack", or by any other familiar name. This is a handicap to the successful fight against adverse legislation, for with such exhibitors lacking it is difficult for the producers to convince the legislators that they are seriously exerting efforts to cleanse the screen.

In 1926, Sam Katz, of Paramount Publix, decided to dispose of all Publix theaters in small towns, his intention being to confine himself to key cities. The poor quality of the pictures, which at that time were silent, was the cause. The weekly losses were heavy. Talking pictures came along and saved the situation for him. People so flocked to the picture theaters that the losses turned into profits overnight. In the following years, the profits were great, not only for Publix, but for all chain operators; because of the tie-up with Electrical Research Products, Inc., they were able to get instrument installations immediately whereas the independent exhibitor sweated blood trying to get an instrument. But the novelty of the talking picture has worn off; people have become just as discriminating as before. More so, in fact, with the result that theater attendance has fallen off. The quality of the pictures has been so poor that people have become sick and tired of them. But the chains cannot stand poor business now as much as they did in the silent days, any more than can the independent exhibitors. The cost of operation is much greater today than it was during the "silent" days. There are the talking picture instruments to amortize; and service charges to take care of. And pictures cost more, shorts as well as features. The result is that

the chains just now are breaking. Their dissolution has already set in; and if the quality of the pictures is not improved soon, such dissolution will be precipitated.

Man for man, the independent operator can always defeat the chain operator for business; all the independent man needs is a fair break for product. But even lack of product is not such a handicap to many of them, for they succeed in taking in at the box office more money than is done by their competing chain theater, even though the pictures are second-run,—shown in his theater after the chain theater had shown them. With a better break for product, they would force every chain theater to fold up tent and to go.

Harold B. Franklin, recognized as one of the leading authorities on circuit theater management, believes that theater chains will be successful in the future but holds that they should not continue to be controlled by producer-distributors. He believes that exhibition should be divorced from the other operating functions, since the high investment in theaters as contrasted with the relatively small investment in rentals of pictures renders the interests of the two functions diametrically opposed. Mr. Franklin believes further that to be successful chain theaters must have sustained quality in product, the securing of which depends upon selection of films from a broad field and without regard to the producers' identities.

It has been held that one of the basic reasons for the failure of chain theaters under centralized management is that the system has been built on the theory that the entire public should be satisfied.<sup>8</sup> Such an aim, although desirable, is held to be impracticable. Localized operation is suggested as a possible solution in that it might increase managerial efficiency.

Certain commentators are doubtful of the future success of chain theaters except perhaps on a very small scale. The inherently speculative character of the business, the necessity for high-quality pictures regardless of what company produces them, and the desirability of spreading the natur-

<sup>8</sup> *Variety*, February 4, 1931.

ally large investment among many financial interests are some of the reasons advanced in substantiation of this belief.

An opinion held by some persons actually connected with theater operation is that chains are economically sound and desirable as long as they are comprised almost entirely of de luxe and large first-run houses. In other words, these persons believe that the national producer-controlled chains should dispose of a majority of their small and subsequent-run houses.

The Publix Theaters Corporation was the first circuit to make drastic changes as a means of meeting existing conditions. The company, first of all, took steps to alleviate most of the burdensome clerical duties that theater managers had been forced to perform. Under the new policy, managers were to become fixtures locally. They were to concentrate all thought upon seeing that proper pictures were shown in the right houses on appropriate days. There was to be more individual responsibility and more latitude in the exercise of ingenuity than had theretofore been granted.

It was intended that institutional selling should not be overemphasized and that overstandardization should be checked. The securing of the proper type of personnel would be considered first at all times. In selecting managers, the company planned to avoid misfits. Thus, a man having de luxe theater training would not be assigned to a low-price, subsequent-run house, and vice versa.

A complete change in the buying and booking department was also effected. During the period of rapid expansion following 1927, it was necessary to combine the two departments. In acquiring theaters, the company had been forced to assume the contracts for from 100 to 2,000 unplayed pictures with each circuit. Consequently, instead of being free to negotiate for the best pictures available, the company's film buyer spent a large part of his time disposing of thousands of dollars' worth of unplayed product. With the change in the policy of booking and buying, the theater



managers were given greater latitude than ever before in the selection of product.

The mechanics of the selection of product required that each division manager, with the assistance of the district managers within his division, make up the product requirements both of feature pictures and of short subjects for the division for one year. In making their selections the district and division managers would call upon the exchange managers of the Paramount Publix Corporation for assistance in obtaining a better understanding of local conditions. Also, the unit theater manager would be relied upon for many of the data in regard to local holidays and occasions, local ordinances, the assets which determined civic pride in particular localities, facts about competition from various types of amusement, information about competitive theaters, and many other factors.<sup>9</sup> The division managers turned in their requirement lists to the home office, which did the actual buying for all their theaters in the country, taking advantage of the buying power gained through the purchase of large quantities. All persons concerned with selection of product were asked to consider first Paramount pictures and then the films produced or contemplated by competitors.

Harry Arthur, general manager of the Fox Theaters Corporation, was of the opinion that the circuits no longer needed to divest themselves of their small theater holdings. He recognized that in certain isolated cases independent exhibitors might pay less for films and at times less for help; they also were in a position to obtain spot bookings of which the big circuits, for reasons of policy, were unable to take advantage. On the other hand, he believed that the circuits had discovered the defects in their system. They no longer had bebuttoned ushers and imported elaborate surroundings in the strictly local theaters; instead, both the atmosphere and the dress of the attendants in such theaters had been

<sup>9</sup> See the Community Analysis made by the Publix Theaters Corporation, *Motion Picture Herald*, March 28, 1931, p. 19.

made appropriate to the respective localities, and expenses had been kept in line with the receipts.

Under the system in use in 1931, according to Mr. Arthur, the theater manager was a permanent resident of the town in which the theater he managed was located. He accepted orders from the central office as long as they were within reason and did not interfere with his treatment of local problems. The system demanded that central chain policies be adhered to, that certain definite standards be met, and that necessary company procedure with regard to the business administration of theater operation be observed and complied with. In all other respects the theater was to be conducted as a local institution in conformity as closely as possible with local tastes and prejudices.

Such a policy, it was believed, would enable circuits to overcome the obstacles formerly encountered in the operation of theaters located in sections of the country differing widely from one another. Thus, the circuits would be able to offset a local exhibitor's greatest advantages, which were his presence at the seat of operation, his knowledge of the local people and the territory, and the ability to inject his personality into the conduct of the theater. The following summary of the Fox Theater Corporation's plan of operation as of 1931 appeared in the *Exhibitors Herald World*, February 7, 1931:

It is the plan of Fox to immediately alleviate clerical duties of managers and give them more responsibilities along theater executive lines. They have been told that in the future only 12 reports, probably one each month, will be expected from them. These reports will take the form of letters and will contain nothing of a statistical nature as heretofore, but will concentrate on suggestions for better business as advanced by the individual operator. They are to be sent to the division or district manager.

The division managers, in turn, will take up these suggestions with the general manager. The division heads and managers of de luxe houses will establish stronger contacts with home office departments and are to report to the "g. m." on these contacts.

Three of the main office departments will maintain an inspection of all divisions and de luxe houses. The advertising department will

do this by examining the weekly press books. This will be supplemented by personal visits from representatives of the department.

The accounting department's inspectors will observe and report just as any auditor does.

The purchasing and maintenance department will send out men who will go over the house from cellar to roof, observing cleanliness, condition of equipment, efficiency of projection and sound, etc.

Based on these inspections, records will be kept on every manager for the purpose of determining which men are to be kept in mind for promotion.

These visits from home office representatives are intended to keep managers, no matter how far from New York, from feeling "lost", forgotten, or neglected.

These reports will be specific. They won't merely say that advertising is poor or that the house is dirty. They will tell just why advertising is faulty and will name the particular part of the house that needs cleaning. On the favorable side they will be just as specific, according to the plan.

Managers will get more help as well as more intensive supervision from the division manager. He must make himself familiar with individual operation and must get an appreciation of the operator's problems. If this means he must stay in each house a whole day or even longer, he will do it.

The policy of the Fox Theaters Corporation, as thus indicated, was carried on a step further toward completion at the end of 1931. It was planned that the Fox group in the East, which numbers approximately 140 theaters and comprises what formerly were known as the Fox Metropolitan Theaters, including the Poli circuit in New England and the Schine and Midwesco circuits around Chicago and Milwaukee, should be broken up into distinctive compact units which would operate independently and still be affiliated. The group probably will be broken up into units as they now stand. Thus, there may be a New England unit, a Long Island unit, a New Jersey unit, and a Midwesco unit. Each is to be operated entirely independently by a single head who will be known as general manager of that section. The Fox de luxe theaters everywhere will be segregated into a special group of their own. These probably will be under the direct supervision of an executive in charge of theater

operations. The minor units to be formed are to be collated into an affiliated system of independent minor circuits in a fashion similar to that of General Motors. Each unit will have its own general manager. For these positions the company plans to retain its present personnel. The unit managers are to be under the supervision of two executives, who may be made vice presidents of the Fox Film Corporation in charge of theater operation.

In breaking up its theater group in the East, Fox hoped to achieve by localized operation the same result that might have been achieved through circuit amalgamation or co-operation in other companies.

Even at the risk of repetition, the following citation from *Variety*, November 1, 1932, should be added:

The resignation of Sam Katz coincident with the decentralization of the Publix Circuit, the country's leading theatre chain, completes the cycle of an experiment in theatre operation. When Katz joined Paramount in 1925, the company had no nation-wide circuit, but operated about 200 theatres, mainly in New England and the south. . . .

The Katz plan was a national circuit with centralized operating control. . . . A great circuit of 1,000 or more theatres could, with its bulk buying of product and materials, effect tremendous savings. Theory was that Paramount product would be insured preferential release without sales effort, profits of exhibitors and small chains to be purchased would be consolidated and increased by improved methods. Standardized operation of higher quality, with a nationally established trade mark—Publix—would guarantee consistent grosses. Financing would come readily from bankers who favored the brick and mortar plan over ideas and celluloid. With breath taking speed . . . (a large number of theaters) were purchased for the Publix plan. . . . These were purchased on a boom time profits basis plus the anticipated increase due to improved methods of operation to be applied . . . big de luxe theatres were built across the country. . . . And in smaller cities pretentious theatres were erected. . . . The real estate and construction departments of Publix were expanded to cope with the national plan until the total value of realty handled exceeded that of any firm or brokerage office in the country. The theatre department of Paramount then became more important in point of investment and influence than either distribution or production.



. . . All important decisions for every theatre were made in New York. The home office staff functioned at a weekly cost of \$125,000 or over \$6,000,000 yearly, with this staggering overhead distributed among the Publix theatres. An elaborate organization of 19 home office departments was evolved. Complicated forms, red tape and routine were required to keep the home office informed of what was happening from coast to coast and to keep the field force informed about what should happen. . . . It was difficult for top executives in New York to master the geography involved, not to mention individual theatres or the names of theatre managers. Conflict between home office control and local control of individual operations was the first monkey wrench in the machinery. Excessive standardization and stereotyped routine were inevitable. . . . The more the home office muscled in, the less eager were local managers to cause offense by noisy initiative. They merely played the game and were above all things respectful to superiors who were too far away to interpret this attitude for what it really was. . . .

Delay in action due to red tape, dearth of individual initiative in the field force who saw overhead mounting, faulty booking by newcomers who did not understand community preferences, centralized handling of union scales which penalized smaller operations, increased taxes because the wealthy national chain seemed prosperous, community resentment against a huge foreign corporation, local newspapers; increase in rates, lack of competition between three or four managers of the same circuit in the same city because of standardization, blanket regulations without regard to quickly shifting local conditions. . . .

Bulk buying and other producer-distributor circuits demanding the same rentals for their product that Paramount product received at its own theatres. This leveled off the big saving that was supposed to justify bulk buying. Film costs were more than when the head of a small chain bought for his theatres without restrictions. Home office department heads fought for home office control to preserve their departments and keep their jobs. It was too evident that if authority were taken from New York and vested in the field force, that some comfortable home office berths would be empty. The tip-off on the weakness of centralized operation came when the Publix partnership operations controlled from the field, and without New York interference, showed profits that were in sharp contrast to red figures of similar operations under New York control. . . . The more the home office machinery was dismantled, departments eliminated or skeletonized, red tape junked and cabinet meetings cut, the less effective was what remained. If the centralized plan could not succeed when functioning in full strength, it was certainly not practical when

reduced to one-tenth of its strength. The more home office functioning was reduced the less necessary any home office functioning seemed.

The death-knell was sounded when the remaining theatres, not already operated by Publix partners free of any New York interference, were broken up into groups, each to be operated from a central city by an experienced operator with complete liberty of action, and a share of the profits as an incentive to build back the patronage and profits that had been lost. The theater map has reverted to what it had been before the centralized operation plan was launched.

There are many persons who believe that, quite irrespective of the extent to which decentralization of control of theater operations may be carried with reference to the larger theaters, chain operation of *neighborhood* theaters, if successful at all, must be under some decentralized form of control. Underlying this belief are several arguments. One is that of experience. The Universal Pictures Corporation's experience has already been cited, and the experiences of other companies with neighborhood theaters have not always been fortunate. Furthermore, it is contended that in the main a neighborhood theater, being a local house, must appeal to its clientele; in other words, it must be an intimate part of the community. The interest of such houses in local affairs, the personal acquaintanceship of the manager with persons in his community, the local prejudices, and local events of interest must be known. Pictures must be selected on the basis of these likes and dislikes. These conditions cannot be adequately provided by central control.

There is, however, a third reason why it is believed that the larger chains will not endeavor to control neighborhood operations. This is financial in its character. The large producer-distributors have perhaps overloaded themselves with first-run and de luxe houses. Management expenses have become high. It is difficult for a chain to pass on any substantial share of these costs to the small neighborhood house without burdening it in turn with overhead and other charges which become so substantial as to make profitable operation a matter of some difficulty.

Closely accompanying this is a feeling in certain quarters that the financial interests concerned with the industry have come to look with favor upon the sale of certain houses by larger circuits to independent operators. While a part of the reason advanced is the desire to have a strong exhibitor element in the country to combat adverse legislation, there is also the feeling that it is more feasible for an independent exhibitor to run the smaller house than for the larger groups to attempt such operation.

## CHAPTER XII

### CENSORSHIP

ALMOST since its inception the motion picture industry has had to face the problem of censorship. The quasi public nature of the product and its broad appeal and influence have brought about conflicts in political, welfare, reform, and business interests; and, hence, widespread agitation for the enactment of censorship laws. To appreciate the magnitude of the problem from a social point of view, one has but to recall that between 50,000,000 and 100,000,000 admissions, including those of many children, are paid to the theaters in the United States each week. That the films directly or indirectly have some influence on the habits of many of these people individually hardly requires substantiation. Economically, the problem of censorship involves not only direct costs but in particular the limitations imposed on producers in their selection and adaptation of stories and plot treatment. The problems of costs and of limitations in the use of story material became somewhat more serious with the advent of sound pictures.

Because of the restrictions which censorship places upon producers, it has become incumbent upon the industry, through the Motion Picture Producers and Distributors of America, Incorporated, to devise means of self-regulation in order to minimize the need and agitation for governmental control of the films. Despite these attempts, however, up to the present time the task has not been accomplished to the satisfaction of the various conflicting groups.

In order fully to understand the censorship problem as it exists today, it is necessary to know something of the history



of the problem. The first concerted attempt to restrict the exhibition of motion pictures occurred in New York City in 1909.<sup>1</sup> Because of the alleged conditions in the theaters themselves and the alleged character of some of the films exhibited therein, the mayor had closed the motion picture theaters of that city. The exhibitors of the city appealed to the late Dr. Charles Sprague Smith, founder and director of the People's Institute of New York, a citizen bureau of social research. In response, he formed a volunteer citizens' committee to inspect films before they were released to the public. The membership of this committee, known as the National Board of Censorship, included representatives of civic, social, and religious agencies, all cooperating on a voluntary basis. This organization was to become one of the chief advocates of regulation of motion pictures by the industry itself.

During the years between 1909 and 1914, the People's Institute grew weary of the financial burden imposed upon it by the National Board of Censorship; it was decided, therefore, that the latter should accept financial assistance (\$3.50 per reel at first, \$6.50 after 1920) from the motion picture producers. According to certain social organizations involved in the controversy later, the acceptance of this assistance resulted in the withdrawal of many members from the Board. These members, it was stated, held that they would be unable to secure an improved quality of product if their efforts were subsidized. The producers, on the other hand, contended that financial assistance was offered to make possible the development of an organization to perform adequately all previewing without delay and to assume the burden formerly carried by the People's Institute. By 1914, the stamp of approval of the National Board of Censorship had become recognized throughout the country; in many cities, therefore, it was a necessary adjunct to all pictures.

The National Board of Censorship, in 1914, changed its

<sup>1</sup> Adapted from an open letter to Congressman William I. Swoope from the National Board of Review of Motion Pictures, February 6, 1926.

name to the National Board of Review, believing this title to be more in keeping with, and symbolic of, its purpose, which it stated as being "selection" and not "censorship" of films. The Board then organized the Better Films National Council, whose function was "both to liberate and formulate thought regarding motion pictures, their uses and possibilities and the best way to achieve a free screen of a most desirable kind". It sought to accomplish this by furnishing a leadership which placed at the disposal of women's clubs, religious and social groups, and others working on the problem of film regulation, advance information regarding the better and the exceptional films. It supplied this information through correspondence and by the publication of a weekly bulletin. The Council stated its policy to be primarily one of "selecting the best" pictures and "ignoring the rest".

That the National Board of Review and its constituent committees failed to satisfy the demands for censorship of all groups may be gleaned from the texts of the numerous articles published by such organizations as the Federal Motion Picture Council of America, Inc., and the International Reform Federation. Some of the charges made specifically against the Board were that it deceived the public by posing as a governmental body, that it was subsidized by producers, and, what constituted the most fundamental criticism, that its work had not prevented the exhibition of films of alleged immoral character.

The New York State Legislature in 1916 passed a censorship law which was vetoed by the governor. In 1917, the New York Legislature conducted a motion picture investigation, the findings of which indicated that immoral pictures were being produced. The commission for the investigation recommended legal restraint. During 1919, the National Association of the Motion Picture Industry, which represented a majority of the producers and distributors, voted to censor its own films and thereby endeavor to meet the demands of the reform groups.

By 1921, the industry was again confronted with an or-

ganized effort on the part of social groups to secure the enactment of censorship laws. Some of these groups charged that the country was being flooded with many salacious, criminal, and indecent films. According to *Wid's Year Book for 1920*, censorship bills were to be "fought in 36 states during the winter of 1921". The National Board of Review, though still functioning as vigorously as ever, continued to be criticized by the more outspoken advocates of legalized censorship. As a step toward meeting these charges against the industry, the National Association of the Motion Picture Industry adopted a number of resolutions, one of which provided for the adoption of the so-called 13 standards which had been adopted previously by the Famous Players-Lasky Corporation. This resolution stated that the producers would refrain from producing motion pictures depicting subjects such as the following:

1. Sex appeal, white slavery, commercialized vice, illicit love affairs making virtue appear odious and vice attractive, nakedness, suggestive bedroom and bathroom scenes, exciting dances, and unnecessary prolonging of passionate love scenes.

2. Underworld and crime scenes, except when part of an essential conflict between good and evil, and scenes making attractive drunkenness, gambling, use of narcotics and other unnatural practices dangerous to social morality.

3. Stories or scenes ridiculing or deprecating public officers and governmental authority, sects or creeds, and emphasizing bloodshed.

4. Stories or scenes with vulgar portrayals, salacious titles, subtitles, or advertising matter.

In addition the association passed the following resolutions:

That this association records its intention to aid and assist the properly constituted authorities in the prosecution of any producer, distributor, or exhibitor of motion pictures, who shall produce, distribute or exhibit any obscene, salacious, or immoral motion picture in violation of the law, to the end that the recognized public good accomplished by the motion picture shall be preserved and advanced;

That any member of this association refusing to carry into effect these resolutions shall be subject to expulsion as a member of the association, and further subject to such other penalties as the association may fix;

That all exhibitors, producers, and distributors of motion pictures, not members of this association, be urged to cooperate to carry into full effect these resolutions.<sup>2</sup>

According to some welfare organizations,<sup>3</sup> producers made no effort to comply with these standards. The industry at that time, however, was not very well organized; hence it was difficult to focus the responsibility at any one point, or to expect uniform action. During the period in which various social organizations were cooperating with or working apart from the industry on forms of voluntary censorship, several states enacted censorship statutes. Pennsylvania, which pioneered in 1911,<sup>4</sup> was followed in 1913 by Ohio and Kansas.<sup>5</sup> The Ohio law declared that "only such films as are in the judgment and discretion of the Board of Censors of a moral, educational or amusing and harmless character shall be passed and approved by such a board".<sup>6</sup>

In 1915, the Supreme Court, acting on the cases of the Mutual Film Company,<sup>7</sup> declared that "both statutes (Ohio and Kansas) are valid exercises of the police power and do not abridge public opinion". The court, speaking with reference to the Ohio statute, stated:

The argument is wrong or strained which extends the guaranties of free opinion and speech to the multitudinous shows which are advertised on the billboards of our cities. . . . The judicial sense supporting the common sense of the country is against the contention. . . . The police power is familiarly exercised in granting or withholding licenses for theatrical performances as a means of their regulation.

Following this decision of the Supreme Court, several states enacted statutes similar to those in Ohio and Kansas.

<sup>2</sup> See *Catechism on Motion Pictures in Interstate Commerce* by W. S. Chase, p. 46.

<sup>3</sup> Federal Motion Picture Council of America, Inc., Circular No. 14, April 6, 1926.

<sup>4</sup> Penn. Session Laws, 1911, p. 1067.

<sup>5</sup> 103 Ohio Laws, 1913, pp. 399-401; Kansas Laws, 1913, C. 294.

<sup>6</sup> Ohio Constitution, Section 3.

<sup>7</sup> *Mutual Film Co. v. Ohio Industrial Commission*, 236 U. S. 230; *Mutual Film Co. v. Kansas*, 236 U. S. 248.



Maryland legalized censorship in 1916, New York and Florida in 1921, and Virginia in 1922.<sup>8</sup> The application of censorship has been on a rather large scale. In 1924, for example, New York censors suppressed as indecent 624 films, as inhuman 924, as immoral 816, and as tending to incite crime 1,318. During 1928, 2,532 deletions were made throughout the world in feature pictures, and 869 in short subjects. Pennsylvania, according to the Association of Motion Picture Producers, imposes the severest censorship laws in the United States; Ohio is believed to be second. By 1922 the courts of New York,<sup>9</sup> Pennsylvania,<sup>10</sup> Kansas,<sup>11</sup> and Illinois<sup>12</sup> had sustained as constitutional, under the police power, censorship statutes for motion pictures, including newsreels and educational films. Furthermore, by 1928 censorship was operating, through municipal licensing ordinances, in over 30 cities.<sup>13</sup>

In addition, several federal censorship bills had been presented in Congress. In 1915, Mr. Hughes in the House of Representatives and Mr. Smith in the Senate introduced legislation to create a federal motion picture commission to be appointed by the President. The commission was to be a part of the Bureau of Education, in the Department of the Interior. The bill provided a six-year term of office, and salaries of \$3,500 for members and \$4,000 for the chair-

<sup>8</sup> Md. Laws, 1916, C. 209; N. Y. Laws, 1921, C. 715; Fla. Gen. Laws, 1921, C. 8523; Va. Acts. of Assembly, 1922, C. 257. Connecticut has a species of censorship in the Tax Commissioner (Conn. Laws, 1925, C. 177), as has Massachusetts under Lord's Day Observance Provisions (Mass. Gen. Laws, 1921, C. 136) vested in the Boston Commission of Public Safety.

<sup>9</sup> *Pathé Exchange, Inc., v. Cobb*, 236 N. Y. 535, affirming sans opinion 202 A. D. 450 (1922).

<sup>10</sup> *Buffalo Branch Mutual Film Corporation v. Brutinger*, 250 Penn. State 255 (1915).

<sup>11</sup> *Photoplay Corporation v. Board of Review*, 102 Kansas 356 (1918).

<sup>12</sup> *Block v. Chicago*, 239 Ill. 251 (1909), declaring constitutional an ordinance which placed films in the class with penny arcades and first declared for preview of films in United States.

<sup>13</sup> See "Official Censorship Legislation", pp. 170, 172, of *Annals of the American Academy of Political and Social Science* (November, 1926). See also *Message Photoplay v. Bell*, 100 Misc. 267 (1917), reversed 179 A. D. 13 (1917) and *Woods v. Gilchrist*, 200 A. D. 128 (1922), affd. 233 N. Y. p. 616.

man. This bill did not contain standards for the production of films. In 1920, Congressman Herrold presented a bill in the House to prohibit "shipment, exhibition of moving picture films, purporting to show or simulate the acts of ex-convicts, desperadoes, bandits, train robbers, bank robbers, or outlaws, and to prohibit the use of mails in carrying the same", and providing punishment. Senator Gore also introduced a bill dealing principally with the importation and transportation of films purporting to show crime and criminals. None of these bills were passed.

In 1921, the Federal Trade Commission issued a formal complaint against the Famous Players-Lasky Corporation and five other organizations, charging, after a thorough investigation, that block booking as practiced in the motion picture industry was in restraint of trade. One of the complaints against block booking was that the exhibitor was obligated to show all pictures listed on his contract. This obligation, together with the then rapidly developing producer-distributor-exhibitor integration, was held to be largely responsible for the presentation of poor pictures regardless of public opinion.

Faced with the probability of additional state and national legislation, the industry recognized the need of effecting a united front under the leadership of one executive. Accordingly, in 1922, the Motion Picture Producers and Distributors of America, Incorporated, representing at that time over 80% of all motion picture producers, was organized and engaged Will Hays as its president. The following quotation taken from a publication of the International Reform Federation entitled "Broken Promises of the Motion Picture Industry" presents another view of the reasons back of the formation of the Hays Organization:

In 1922, March 4, the Motion Picture Producers and Distributors of America, for an immense salary, induced Will H. Hays to resign as Postmaster General and become their president. The Congressional investigation threatened by the Myers Senate resolution, the complaint and investigation begun on August 31, 1921, by the Federal

Trade Commission, the Appleby bill in Congress for the Federal Regulation of Motion Pictures, and the New York State Motion Picture Law which went into effect August 1, 1921, and censorship laws in many states made the services of an experienced politician like Mr. Hays, who had been chairman of the National Republican Committee, seem very desirable. Mr. Hays assured the public that he recognized the destructive moral effect of pictures that stressed the suggestive and the vulgar, and he promised "to develop to the highest possible degree the moral and educational value of the industry".

There was fairly general agreement in the industry that, immediately preceding the formation of the Hays Organization, the relations of the motion picture industry with the public were not always very favorable. Not only had the film executives failed to appreciate the magnitude of the task of regulating the films which they produced, but also they tended to look askance on any organized effort to meet the demands of reformers. In addition, the numerous Hollywood scandals that filled the tabloid pages from 1920 to 1922 lessened the public's faith in the industry. By 1922, therefore, the industry was sorely in need of organized leadership, especially in matters pertaining to public relations.

As one of its first moves the Motion Picture Producers and Distributors of America organized a committee on public relations made up of representatives of 62 national welfare organizations representing social, educational, commercial, and religious groups. This body was to function in an advisory capacity, assisting the industry in the interpretation of public demands and moral standards. The underlying purpose was not censorship; rather it was to have these organizations tell their respective members what pictures to patronize. The committee functioned in a reasonably satisfactory manner until 1924 when, following Mr. Hays' refusal to blacklist a well-known actor of questioned moral status, a number of the welfare organizations withdrew their members. Certain of the representatives in announcing their withdrawals said that they "did not want to be en-

gaged in such inconsequential work". Others, with reference to the general conduct of the committee, referred to it as a "smoke screen, an obvious camouflage, an approval stamp for the salacious films and for the questionable, if not criminal, conduct of the industry and its employees".<sup>14</sup>

In January, 1925, the National Committee for Better Films, affiliated with the National Board of Review, adopted a resolution which presented its viewpoint as being opposed to legal censorship of motion pictures. Referring to legal censorship the resolution said in part:

(1) It is political in its nature and arises from the demand of the organized minority who are desirous of imposing their interpretation of motion picture values, in the matters of morals and of good and evil, on the opinion of the vast majority.

(2) It presupposes that the American public are willing to patronize an entertainment which is vicious in its tendencies and likely to corrupt their morals—a state of mind in the individual American picture-goer that this Conference does not believe exists, unless one is ready to admit that the whole nation is already corrupt and decadent.

(3) It seeks to shift personal responsibility and the responsibility of parent toward child to the shoulders of politically appointed public guardians, who are no more likely to have special qualifications for the exercise of such guardianship than the ordinarily intelligent man or woman; and such shifting of moral responsibility, this Conference believes, makes for slovenly spiritual habits both in the individual and in the nation.

(4) It is a makeshift at best, in nowise securing the end sought (that of improving motion pictures), and tending psychologically to invent the alleged reason for its existence, as well as to perpetuate as an alleged necessity what is in reality a politically paying institution—legal censorship.

(5) It has never taken into consideration the fact that the motion picture is primarily not an entertainment for children, but that at its best it is directed at an adult audience and that it must be recognized and supported as a form of expression for mature minds if it is to fulfill its possibilities both as an art and as an educator; at the same time, in its aim to make all pictures harmless for children, legal censorship has failed to provide alike for any recognition of those pictures suitable to young people and those pictures suitable to adults; again,

<sup>14</sup> *A Survey of the Motion Picture Problem*, published by the Federal Motion Picture Council of America, Inc., p. 5.



because of the small fraction of the public who are weak-minded or vicious it would distort or mutilate a great popular form of expression which can safely be left to the great majority of virile, wholesome people, young and old, of normal reactions; and in the opinion of this Conference it is spiritually weakening to the healthy majority to attempt to protect them by concealment of those things which are deleterious only to society's sick few.

(6) It has often resulted in the mangling or destruction of that which is essentially wholesome rather than unwholesome, because it has failed consistently to grasp the real causes of psychological reaction to what the eye sees, and has often confused what may be a stimulus to good with what may be a stimulus to bad—in other words, it has failed, and always will fail, since it is whimsical rather than thoughtful and scientific—to apprehend the psychological laws of suggestion.

(7) It has gone on the assumption—largely because the very justification of legal censorship rests on that assumption—that there is continuously running through motion pictures an element of the vicious, whereas, in the opinion of groups who have studied the great proportion of motion pictures over a long period of time, this element can be said to exist but sporadically and can be discovered as in nowise inherent in the medium itself.

(8) It has failed to recognize, and dare not recognize, because it is based on the theory that there are final, unchanging universal standards of good and evil and of good and evil influences, that fundamental in the whole question of the motion picture is a legitimate and inevitable difference of opinion between sections, communities, groups and individuals of equal intelligence and moral integrity; and has sought to define, often with lamentable discrepancy in the actions of different legal censorship boards upon the same given picture, interpretations and opinions to apply arbitrarily to all minds and all tastes—interpretations and opinions that are nothing but the individual pronouncements of the censors themselves, arising out of their own feelings and notions.

(9) It has tended, through fear, on the part of screen writers, artists, and creators, of its arbitrary dictums and misconceptions, to pervert rather than to benefit the nature of the motion picture; it has created a state of mind in these individuals that has often resulted in the befuddling and corruption in narration on the screen of what has gone not only unchallenged but approved in literature and on the stage; it has been a powerful aid in the distortion of even the best literature and drama transferred to the screen and in the distortion of life that legitimately has a place on the screen, and should have a place there, if motion pictures are to become an art, albeit a popular

one; it has thus been a partner in responsibility for much that is false, shoddy and insincere in motion pictures, and has been a prominent factor in the discouragement of such authors and artists as are necessary to bring to the motion picture the truth and beauty of great art.

(10) Legal censorship, for the above reasons, may be said to have defeated the very thing that, in the alleged circumstances, it was supposed to do [improve the motion picture]; it has destroyed and not remedied; it has won neither the support nor the confidence of the masses or of the great proportion of thoughtful people; it has been defeated at the polls when the question has been put to the test; it strikes at the common decency of the individual; it spurns the intelligence; it corrupts the imagination; it is a tool to prejudice and to political contrivance; it can never be made different, because the fallacy is inherent in the institution.

With all of the above in mind, it is the sense of this Conference, composed of private disinterested citizens, most of whom have been active in studying the motion picture over a long period of time and in dealing with the social problems it has raised in their several communities, and who at present have at heart the best interests of the several groups and communities they represent, and are engaged in a constructive and unified effort to procure for the motion picture screen all that is wholesome and best and most desirable for the American people, that the foregoing be set forth as evincing this Conference's convictions in the matter.

In the period following 1925, the organizations which in the past had been largely responsible for both the enactment of state laws and the formation of voluntary citizen groups for the censorship of films became convinced that only federal legislation could accomplish their purpose. Many of these organizations constituted the Federal Motion Picture Council of America, Inc. They included parent-teacher associations, women's clubs, home study clubs, get-together clubs, literary clubs, Y.M.C.A.'s, law and order societies, federations of church women, missionary societies, home missions, women's independent voters' associations, and branches of the W.C.T.U. Mrs. Robbins Gilman, executive secretary of the Woman's Cooperative Alliance, Inc., stated that her organization had concluded that city and state censorship would not eliminate objectionable scenes nearly

so well as some means of preventing their inclusion when a picture was produced.

In 1926, Congressman Upshaw introduced a bill, which had been presented first in 1923, "to create a commission to be known as the Federal Motion Picture Commission" under the Department of the Interior, as a division of the Bureau of Education. The commission was to be composed of the Commissioner of Education, *ex officio*, and six commissioners. The commissioners were to be life appointees, dependent upon their good behavior. Salaries were to be \$9,000 a year for the members and \$10,000 for the chairman.

The Upshaw bill, among other things, provided definite standards governing the production of films. The standards were practically the same as those adopted by the National Association of the Motion Picture Industry in 1921. The bill provided also that all films entering interstate or foreign commerce should be licensed or given a permit by the commission. Provisions were made also for the inspection of scenarios, and for supervisors to assist the producers and directors in the process of production, especially in applying the standards of the act as interpreted by the commission. Licenses would be granted for all pictures approved by the commission. A licensing system was expected to effect prompt previewing of those films entering interstate or foreign commerce which were submitted to the commission voluntarily. The bill provided that permits could be granted without supervision of the film, upon the presentation of an affidavit made by the producer stating that he had conformed with the standards specified in the bill. A violation of the law would result in confiscation of the film.

Those in favor of the bill, headed by Canon William Sheafe Chase,<sup>15</sup> general secretary of the Federal Motion

<sup>15</sup> In a publication entitled "Is the Trend of Motion Pictures Upward?", Mr. Chase says in part, "The radio industry, which is much cleaner than the motion picture business, is supervised by a Federal Commission."

Picture Council of America, Inc., listed 16 reasons for federal supervision of motion pictures. Those pertaining especially to censorship are listed below:

#### REASONS FOR FEDERAL SUPERVISION

1. To prevent improper political activities of the trust.
2. To maintain the freedom of the screen from the strangle grasp of a few covetous men.
3. To secure conformity to moral standards before the films are produced.
4. To save expense and make censorship unnecessary.
5. To provide a centralized neutral distributing agency and furnish a fair market for meritorious films owned by independent producers and also for nontheatrical teaching and religious films, now impeded by about 10 trust-owned exchange systems each in about 26 key cities all over the United States.
6. To lessen the danger of graft possible in local and state censorship boards and to secure better moral supervision of films than through such boards.
7. Because local and state censorship, which can only cut out evil from the films after they are produced, is inadequate and because the industry has broken its various promises to reform itself.
8. To enable the nation to assist parents in protecting their children from movie exploiters of youth.
9. To compel the motion picture industry to conform to the laws and ideals of America, and thus properly train the future citizens of our country.
10. To preserve American business in other lands through films acceptable in foreign countries. Otherwise other nations, like Russia, may adopt government ownership of films and exclude American films.
11. To protect exhibitors from the producers and distributors and to develop the industry to its largest capacity to maintain a broad open field of endeavor in its every branch.
12. To prohibit the block system of renting films and the producer ownership of theaters as unfair business methods contrary to the antitrust laws.
13. To provide wholesome films for the world and insure universal peace.

Adversaries of the bill were of the opinion that volun-



tary censorship was improving.<sup>16</sup> They contended that self-regulation was in keeping with the American conception of self-government; that federal supervision, because of its political character, would only increase the alleged abuses existing in state and municipal censorship boards; and that the repudiation of censorship in Massachusetts<sup>17</sup> indicated that the people of this country opposed it. These opponents of the bill ridiculed the idea that political censorship suppressed crime; as an instance they cited Chicago, whose rigid censorship for over 12 years, excluding films showing bootleggers, hold-ups, and the carrying of firearms, had scarcely made Chicago a model city.<sup>18</sup> Finally, the idea that Congress more than the individual states could divorce politics from censorial duties was looked upon as impracticable.

In 1926, President Coolidge declared himself opposed to the Upshaw bill. The *United States Daily* of April 21, 1926, said in part:

Mr. Coolidge believes, it was stated, that the Congress should not undertake the creation of a national censorship board unless the states themselves specifically approve.

It was pointed out that Mr. Coolidge, as governor of Massachusetts, vetoed a film censorship act passed by the state legislature. He took this action on constitutional grounds.

Of late, the President has heard no material criticism of the character of motion picture production. This he attributes to the fact that the producers themselves undertook to reform their industry, and in his opinion they have taken long strides in the right direction. Will Hays, former Postmaster General and now "movie Czar", has been a most helpful influence in this work, it was stated.

Motion pictures, in the opinion of the Executive, have been a great element in creating better understanding among the nations. American producers, it was pointed out, have brought the people of

<sup>16</sup> See Barrett, "Work of the National Board of Review", *Annals of the American Academy of Political and Social Science*, Vol. 128, November, 1926, p. 175.

<sup>17</sup> In 1920, the Massachusetts Legislature passed a film censorship bill which was vetoed by Governor Coolidge. In 1921, the bill was approved by Governor Cox. In 1922, by referendum, the bill was defeated almost three votes to one.

<sup>18</sup> See *Censorship in the United States* by James N. Rosenberg. (The Court Press, 47 West Street, New York.)

this country into a more intimate touch with foreign nations, and their work in this direction deserves praise.

The motion picture industry is recognized by President Coolidge as one of the leading businesses in the United States, and as such he feels the Government should encourage it in every legitimate way.

Following the shelving of the Upshaw bill, two further attempts to secure federal regulation and supervision of the motion picture industry were made. At the Seventieth Congress, Senator Smith W. Brookhart sponsored a bill <sup>19</sup> which was designed primarily to prevent any restraint upon free competition in the production, distribution, and exhibition of copyright motion picture films. The Brookhart bill was championed by the advocates of federal supervision of motion pictures because it would render block booking and so-called "forced" and "blind" buying unlawful.

The Hudson bill <sup>20</sup> would create a Federal Film Inspection Bureau, attached to the Department of Commerce. The bureau would be charged with the responsibility of inspecting, classifying, and cataloguing all films and advertising materials incidental thereto, before the entrance of films into interstate or foreign commerce. The bill also proposes "to protect the motion picture industry against unfair trade practices and monopoly, to provide just settlement of complaints of unfair dealings, to provide for the manufacture of wholesome motion pictures at the source of production, to create a Federal Motion Picture Commission to define its powers, and for other purposes".

With the introduction of talking pictures the problem of censorship assumed an importance even greater than it had had formerly. In the era of silent films, although censorship was expensive and at times very unsatisfactory to all parties concerned, generally speaking it involved a rather

<sup>19</sup> S. 1103.

<sup>20</sup> H.R. 13686. Representative Grant M. Hudson, in discussing his bill before the House in March, 1930, declared, "I am not concerned with the censorship of this matter but I am concerned with this unfair federal trade practice of block booking and blind booking. I want that done away with and that is the main intent of the bill."

simple procedure. Sequences could be deleted without seriously hampering the films, and titles could be rewritten at the distributors' local exchanges for approximately \$5 each. The usual fee charged by state and city censorship boards ranged from \$2 to \$3 per reel; a similar amount was charged for each print thereof shown locally. One writer estimated that the annual cost of the censorship process, both voluntary and legal, was about \$3,500,000;<sup>21</sup> this amount was borne by the industry.

(Censoring the talking picture, however, presented a much more complex problem.<sup>22</sup> Dialogue, as well as the pictorial effects, was subjected to censorship. From a mechanical standpoint, the deletion of a few words often required the cutting of an entire sequence. When such an operation was necessary, three alternatives were open to the distributor: to present a possibly less effective and sometimes ridiculous product; to request a retake from the studio, though this course was not always possible because of the unavailability of the actors; or to abandon exhibition in the territory in which a picture had been censored.) The cost of correcting dialogue film to coincide with the demands of the many different censorship boards was many times that of correcting the silent product.

Further to complicate the problem for producers, some of the forces interested in the regulation of motion pictures changed their plan of procedure; they adopted policies and methods to secure the production of better pictures instead of limiting their efforts to censorship, selection, or promotion of pictures already produced. The following excerpts are taken from *Responsibility for Better Motion Pictures*, by Mrs. Robbins Gilman.<sup>23</sup>

<sup>21</sup> Edwin W. Hullinger, "Free Speech for Talkies?", *North American Review*, June, 1929.

<sup>22</sup> The Pennsylvania Supreme Court in 1929 ruled that the censorship statute gave jurisdiction over both silent and sound pictures. A case of the Pathé Exchange, Incorporated, in the State of New York was still pending.

<sup>23</sup> Mrs. Gilman is president of the Federal Motion Picture Council of America, Inc.

. . . . . The programs for previewing, selecting, "endorsing the best and ignoring the rest" are futile processes because they can have no influence upon production or distribution and only an accidental or incidental effect upon exhibition of films. The effectiveness of these programs has been thoroughly demonstrated so that during the past two years (1928, 1929) the policy of ignoring the great increase of undesirable films is being abandoned by welfare organizations interested and active upon the subject. Several of the largest and most influential organizations have not only given up such inconsequential work, but they have also repudiated these suggestions of the industry and are developing programs to oppose them. The plan now being suggested is federal supervision of the standards of production and the regulation of undesirable trade practices of the industry.

All studies of the subject as well as all efforts of welfare agencies have led to the fact that exhibitors have little control over the character of the films shown in their theaters. Therefore, they cannot cooperate effectively with welfare and religious groups because they cannot yield to the requests made. This is due to certain trade practices (block booking, etc.) which have grown up in the industry.

. . . . .

The broken promises of the industry constitute a large section in the history of motion picture development. These can be read in many authentic publications. Promises have been broken so frequently that the principle of noncooperation has gained a real place in the movement to secure federal regulation of the trade practices and supervision over the standards of production. . . . .

Censorship has been tried by volunteer agencies, city, state, and national authorities and found wanting, as can be seen by viewing a complete program in any house at any time. . . . .

. . . . . The necessary rapid production and transportation and the very nature of much of the product of this enormous industry make censorship inadvisable even though there were not more fundamental, and from a practical point of view, almost insurmountable difficulties. The practices and restraints, especially as they control distribution and exhibition of films, are becoming very generally recognized as the real causes of objectionable films both for domestic and for foreign use.

There need be no further investigation of censorship or experimentation with it, for that has been thoroughly done. Sixty-four per cent of the films shown are now censored at some time between production and exhibition. There are several national groups subsidized by the motion picture industry censoring, reviewing and previewing with no appreciable change except to have the objectionable scenes



produced more subtly and alluringly. This previewing gives a feeling of false security.

A study of censorship laws in cities and states of this country, and of the censorship laws of over 50 foreign states, shows a remarkable uniformity in pictures prohibited, scenes deleted, criticism of subject material and treatment. The study shows that high intellectual and welfare standards are encouragingly uniform regardless of race, nations, or geography. The experiments in censorship have given us standards of measurement for the production of films that completely and conclusively belie the box office criterion, which has been one of the industry's most effective bromides. While censorship is not the solution it has given us an excellent argument for the solution. It has furnished us with standards by which pictures can be produced in the interest of individual and universal welfare.

The motion picture industry has gained a tremendous power from the financial point of view. It is no longer considered an outlaw, but a sound investment on the stock exchange. It is listed among the leading exporters of the world. It is also an importer of no small amount of raw stock. It is a great political force wherever it goes. It is a subtle but most forceful social arbiter of fashion, of morals and social patterns of character as well as of dress. It influences trade and immigration. The picture acts quickly, decisively, and antedates other forms of expression. It is continuous and convincing. It has, with the radio, movietone, photophone, and other similar devices and allied attachments, the greatest potential power at present known over the destinies of mankind. It is said to have a "circulation exceeded only by the Koran and the Bible".

The question of controlling this octopus of amusement and education must be considered from both the welfare and economic phases. They are so closely related, however, that they cannot be entirely separated even for discussion. They both require federal legislation for the supervision and regulation of the production, distribution, advertising, and exhibition of films.

Confronted with this attitude, the motion picture industry, through the Motion Picture Producers and Distributors of America, decided to oppose censorship openly and to prove to the public that self-regulation was the only practical solution to the problem. This organization's view of the question is indicated in the following quotation: <sup>24</sup>

<sup>24</sup> E. W. Hullinger, *op. cit.*

Governor Milliken charged that censorship reduces an art or medium of expression to the capacity of political appointees who cannot be expected to exercise any judgment other than that which their own individual experiences and mentalities provide. "It is not to be presumed", he added, "that any 3, 5, or 50 persons in this country whose services are obtainable at the salaries paid to censors have the ability to determine what the other 120,000,000 citizens are to see or hear."

He pointed out that each week an average of about 54 miles of film are released in the United States. Members of the censorship boards themselves neither can nor do see even 10% of this total. They must delegate much of the work to subordinates.

As a further safeguard against the presentation of objectionable films, Governor Milliken cited the intramural "supervision" which the moving picture industry has been maintaining since the establishment in 1922 of the so-called movie "chamber of commerce". As a result of the consultations between this body and individual producers, the production of about 200 popular books and plays has been prevented after the production contracts had actually been signed. . . .

In 1926, the Motion Picture Producers and Distributors of America had created an advisory bureau, one objective of which was to exercise centralized supervision over the quality of plays and books accepted for production, to advise producers with regard to possible deletions in advance of general release, and to do everything possible, in a friendly way, to preserve the industry from missteps. In 1929, this department, known as the Studio Relations Committee, comprised 16 persons, each of whom represented a producing studio. Through these members advice was given to the men and women actually engaged in writing, directing, or acting in the pictures in process of production.

Public opinion was expressed to the advisory bureau through the Public Relations Department of the Motion Picture Producers and Distributors of America, Incorporated. Local opinions were relayed by representatives of 46 prominent social organizations which had agreed to assist the industry. In addition, duly appointed representatives of these national groups were to be maintained in Hollywood

to preview pictures immediately upon their release from the studios.

Another objective of the advisory bureau was to guide the family in the selection of films by calling attention to outstanding and deserving productions. This was accomplished through the publication of the *Motion Picture Monthly* and through financial assistance given various welfare organizations which were interested in the publication of their own opinions as regards the suitability of specific films to family patronage. A number of social organizations, before 1929, had been previewing pictures and publishing, voluntarily and without subsidy, lists of endorsed films.

Early in 1930, according to Will Hays, voluntary regulation of films before production by members of the Motion Picture Producers and Distributors of America had provided a measurable improvement over the former policy of receiving the completed prints in New York and then shipping them back to the coast for changes. Mr. Hays was quoted by the *Motion Picture News*, April 12, 1930, in part as follows:

The new system binds the studios for the next six months. Under it, producers submit scripts to a reading department organized for the purpose. The reading is done under the direction of the Hays Organization, Public Relations Department, headed by Col. Jason Joy.

The staff covers all features and comedies produced by members of the Producers Association. Recommendations are made for revising scripts where situations and dialogue are not in good taste, or where they might possibly offend a particular nation or country. After a script is passed, there is a follow-up in viewing the completed picture.

By this system the Public Relations Department covers every picture, whether feature or short subject, via a double check to keep objectionable material down to a minimum, besides insuring producers that difficulties will not be encountered when pictures are shown in foreign countries.

If a specific production carries a foreign locale, or deals with characters of a certain nationality, Joy's department consults an accredited representative of that country with which the story deals on the

script layout. The recommendations for changes, or script approval, are then forwarded to the producer planning the production.

In March, 1930, in order to facilitate this method of regulation, both from the standpoint of the producers and from that of the Hays Organization, and as a further step in self-discipline, the Motion Picture Producers and Distributors of America, Incorporated, announced the adoption of a code of moral principles to govern the production of films. This code, which was subscribed to by the 20 leading producing companies, was designed to govern the production of films portraying crimes against the law, sex, vulgarity, obscenity, profanity, costumes, dances, religion, and repellent subjects.

## A CODE

### Regulating Production of Motion Pictures

Formulated by the Association of Motion Picture Producers, Inc., and the Motion Picture Producers and Distributors of America, Incorporated.

## GENERAL PRINCIPLES

1. No picture shall be produced that will lower the moral standards of those who see it. Hence, the sympathy of the audience should never be thrown to the side of crime, wrongdoing, evil, or sin.
2. Correct standards of life, subject only to the requirements of drama and entertainment, shall be presented.
3. Law, natural or human, shall not be ridiculed, nor shall sympathy be created for its violation.

## PARTICULAR APPLICATIONS

I. CRIMES AGAINST THE LAW. These shall never be presented in such a way as to throw sympathy with the crime as against law and justice or to inspire others with a desire for imitation.

### 1. Murder.

- a. The technique of murder must be presented in a way that will not inspire imitation.
- b. Brutal killings are not to be presented in detail.
- c. Revenge in modern times shall not be justified.

### 2. Methods of crime should not be explicitly presented.



- a. Theft, robbery, safe-cracking, and dynamiting of trains, mines, buildings, etc., should not be detailed in method.
- b. Arson must be subject to the same safeguards.
- c. The use of firearms should be restricted to essentials.
- d. Methods of smuggling should not be presented.
- 3. Illegal drug traffic must never be presented.
- 4. The use of liquor in American life, when not required by the plot or for proper characterization, will not be shown.

II. SEX. The sanctity of the institution of marriage and the home shall be upheld. Pictures shall not infer that low forms of sex relationship are the accepted or common thing.

- 1. Adultery, sometimes necessary plot material, must not be explicitly treated, or justified, or presented attractively.
- 2. Scenes of Passion.
  - a. They should not be introduced when not essential to the plot.
  - b. Excessive and lustful kissing, lustful embraces, suggestive postures and gestures, are not to be shown.
  - c. In general, passion should so be treated that these scenes do not stimulate the lower and baser element.
- 3. Seduction or Rape.
  - a. They should never be more than suggested, and only when essential for the plot, and even then never shown by explicit method.
  - b. They are never the proper subject for comedy.
- 4. Sex perversion or any inference to it is forbidden.
- 5. White slavery shall not be treated.
- 6. Miscegenation (sex relationships between the white and black races) is forbidden.
- 7. Sex hygiene and venereal diseases are not subjects for motion pictures.
- 8. Scenes of actual childbirth, in fact or in silhouette, are never to be presented.
- 9. Children's sex organs are never to be exposed.

III. VULGARITY. The treatment of low, disgusting, unpleasant, though not necessarily evil, subjects should be subject always to the dictate of good taste and a regard for the sensibilities of the audience.

IV. OBSCENITY. Obscenity in word, gesture, reference, song, joke, or by suggestion (even when likely to be understood only by part of the audience) is forbidden.

V. PROFANITY. Pointed profanity (this includes the words, God, Lord, Jesus, Christ—unless used reverently—Hell, S. O. B.,

damn, Gawd), or every other profane or vulgar expression however used, is forbidden.

#### VI. COSTUME.

1. Complete nudity is never permitted. This includes nudity in fact or in silhouette, or any lecherous or licentious notice thereof by other characters in the picture.
2. Undressing scenes should be avoided, and never used save where essential to the plot.
3. Indecent or undue exposure is forbidden.
4. Dancing costumes intended to permit undue exposure or indecent movements in the dance are forbidden.

#### VII. DANCES.

1. Dances suggesting or representing sexual actions or indecent passion are forbidden.
2. Dances which emphasize indecent movements are to be regarded as obscene.

#### VIII. RELIGION.

1. No film or episode may throw ridicule on any religious faith.
2. Ministers of religion in their character as ministers of religion should not be used as comic characters or as villains.
3. Ceremonies of any definite religion should be carefully and respectfully handled.

IX. LOCATIONS. The treatment of bedrooms must be governed by good taste and delicacy.

#### X. NATIONAL FEELINGS.

1. The use of the Flag shall be consistently respectful.
2. The history, institutions, prominent people and citizenry of other nations shall be represented fairly.

XI. TITLES. Salacious, indecent, or obscene titles shall not be used.

XII. REPELLENT SUBJECTS. The following subjects must be treated within the careful limits of good taste:

1. Actual hangings or electrocutions as legal punishments for crime.
2. Third degree methods.
3. Brutality and possibly gruesomeness.
4. Branding of people or animals.
5. Apparent cruelty to children or animals.
6. The sale of women, or a woman selling her virtue.
7. Surgical operations.

To render adherence mandatory, the following edict was adopted as supplementary to the code :

No prints for distribution shall be made until the picture has been approved by the Association of Motion Picture Producers. Should the decision be that the picture, either in theme or treatment, violates the provisions of the code, changes will be indicated and ordered.

This decision, if contrary to the views of the producing company, may be appealed, first to a production committee of three and finally to the board of directors of the Motion Picture Producers and Distributors of America.

The full personnel of the production committee from which three are chosen to render decision in each individual case includes seventeen executives of coast studios. None of the three chosen can be associated in any way with the studio of the company whose picture is being judged.

It is not likely that anybody, whether within the industry or outside, has any idea that this code would be sufficiently effective to cause those responsible for production to rid pictures of the characteristics which render them unsatisfactory to many diverse groups of interests. Undoubtedly a great many people were, at the time of its adoption, and still are, thoroughly convinced that a substantial number of producers never would take the code seriously. It is hard to believe otherwise. The most sympathetic supporter of many of the directors could scarcely assert seriously that the code has always been complied with. It is difficult to believe that directors have always even attempted to comply with its provisions. The code became effective in January, 1931. A substantial number of pictures produced and released in that year glaringly violate some of the provisions. "Dr. Jekyll and Mr. Hyde" was produced and released by Paramount; in it was a sequence which so obviously contravened the second provision under Section VI (costume) as to make it difficult to see how the director could, by any stretch of the imagination, make it comply with the code. By a great many persons the same picture will be condemned as violating the restriction placed by the code on subjects of a brutal and gruesome character covered by the third provision under

Section XII. RKO produced "Are These Our Children?", so thoroughly misrepresentative of facts and substantially demoralizing as to make one wonder how it could be said that the director had ever heard of a code. Other instances might be pointed out. The New York City censor has estimated that, during the first six months of 1931, the amount of cutting and elimination required substantially exceeded that of the six months of the year preceding the adoption of the code. Those responsible for censorship in New York were so thoroughly satisfied of the neglect of various provisions accepted by the industry as in good taste that they issued a very substantial warning to Hollywood to the effect that, if the policies were not changed, at least to bring them in line with what New York would accept, even more effective measures would be taken. In short, those who contend that producers never intended to follow the code and those who maintain that voluntary censorship is unsatisfactory have been provided, since 1931, with ample evidence to support their claims.

All of this is very unfortunate because, even though one feels that most pictures coming from the studios are mediocre, commonplace, routine things, with only a smattering of entertainment in many cases, the majority of pictures are not actually demoralizing, vulgar, or hideous. Many of them may be poor, but that does not necessarily mean that they are in bad taste. That which the producers are probably unable to see is that the groups interested in securing governmental regulation and governmental censorship are very active and very vigorous, far more so than the great bulk of people who for one reason or another do not interest themselves in the problem and certainly are not active in preventing the minority from exercising such influence as it can. Moreover, many of those who do oppose governmental censorship, however sincere and honest they may be, are to be found on the pay rolls of the motion picture companies, and their arguments are certain to be discounted by any impartial body on the grounds of bias. As has been said



before, the disregard of public opinion has brought upon many an industry regulatory measures which it might well have avoided and which would have been unnecessary if that industry had actively taken itself in hand. The liquor interests were themselves chiefly responsible for their own disenfranchisement. The kindest thing that can be said about some producers is that they do not know any better and are short-sighted or ignorant of the influence of public opinion. But a continuance of this policy on the part of these people will inevitably bring legal censorship. That legal censorship will come is a mere statement of probability and is not to be interpreted as asserting that the industry as a whole deserves it.

The most difficult thing about censorship, from any point of view, is to set up a standard by which to judge and particularly to make that standard sufficiently definite as to be entirely clear. Thus, the *National Board of Review Magazine* <sup>25</sup> in the issue of November, 1931, starred "Are These Our Children?" indicating it to be a picture "especially worth seeing and above the average selected picture". Yet this picture was very generally condemned by the trade press as one of the most unsatisfactory and demoralizing pictures of the year. The problem is complicated by the difficulty of setting a standard for different ages, sexes, and classes. Thus, "The Sin of Madelon Claudet" was cited in the press of December 2, 1931, as being at the top of "the latest list of films reviewed by the National Association of Daughters of the American Revolution . . . . recommended for both adults and *adolescents* <sup>26</sup> . . . . the only one listed which is given A-1 rating". Yet here again some of the trade press stated "The story is demoralizing . . . . hardly suitable for *children* <sup>26</sup> or for Sunday showings in small towns." Where such differences as these exist, it be-

<sup>25</sup> The National Board of Review still is vigorous in its function. Its offices are at 70 Fifth Avenue, New York, N. Y.; Wilton A. Barrett is executive secretary.

<sup>26</sup> The italics are the present author's.

comes perfectly clear that, so long as standards of judgment differ, censorship restrictions will be unsatisfactory. What makes the situation more serious, of course, is that any form of legal censorship is likely to imply regulation by a minority. We already have too many instances of a vociferous minority's right to restrict a freedom of action which is thoroughly acceptable to most of the people and obnoxious only to the few. There are those who may contend, and with some show of reason, that the placing of a curb on the freedom of the screen by a minority is more dangerous than any occasional showing of a demoralizing picture. It is to be hoped that we have not yet reached the point where minorities with self-established standards can control the actions of huge masses of people whose most serious fault is that their judgment as to what is good or bad differs from that of the few. Censorship, as it is now applied, is satisfactory to nobody. Producers, exhibitors, and the public, all have a very reasonable right to complain. It would, of course, be quite the ideal situation to have no censorship laws at all. The general principle upon which producers stand, namely that the regulation of an industry by itself gives the greatest assurance of satisfaction, seems essentially sound. Acting on this principle, however sincerely and honestly, has not prevented our stock and commodity exchanges from being the subject of repeated governmental investigations and very substantial regulation. Producers are, after all, responsible fundamentally for the condition of the censorship problem. Unless the industry takes drastic steps, there seems to be little reason to doubt that those actively interested in obtaining governmental regulation will succeed in convincing the public. The industry cannot and does not intend to do anything for itself. It is difficult for the public to harmonize the offerings on the screen with the assertion of the spokesmen of the industry in the press and at public functions to the effect that "We must voluntarily agree upon and enforce common bases of standards in relation to good taste and wholesomeness." People are more likely to judge the in-

dustry by its pictures than by its formulation of principles.

It is very difficult to bring oneself to believe that governmental censorship of the sort proposed by some of the more radical groups is desirable. It may well be that we already have too much of regulation. The American people, after all, cannot be legislated into sainthood. Control by minorities is repugnant to our own theory of government. Widely varying standards do exist and will continue to exist and must be recognized. It is sincerely to be hoped that means will be found within the industry itself, as it strives for more entertaining pictures, to eliminate all those things which a certain type of mind responsible for production seems to consider essential to entertainment. It is believed that the industry will do this either voluntarily or under pressure of fear of some form of governmental action. If it does not, it has only itself to blame. No company can afford to keep any director or to release any picture, no matter who or what it is, so long as it adds momentum to the movement for outside regulation—regulation which is very likely to be unsympathetic and lacking in understanding. One thing is certain: If the industry doesn't take steps, society will, and no excuses will satisfy.<sup>27</sup>

<sup>27</sup> Apparently Will H. Hays has reached the same conclusion. (See the *Motion Picture Herald*, April 29, 1933, pp. 9-10.)

In *Child Welfare*, January, 1933, Mrs. Robbins Gilman states, "We have tried cooperation with the motion picture industry for twenty-four years without success. . . . The evidence before the public shows the utter futility of all cooperation with these agencies." Consequently, the National Congress of Parents and Teachers (Mrs. Gilman is Chairman of the Committee on Motion Pictures of this organization) is to concentrate its attention on the independent production of films for education and recreation.

## CHAPTER XIII

### FOREIGN PROBLEMS

WHILE it is true that the greater part of the revenue received by American motion picture companies is derived from the distribution and exhibition of pictures in the United States, yet a very substantial amount of revenue is derived from the foreign market. The amount of this foreign revenue, of course, varies from year to year, but American producers probably obtain from 20% to 30% of their total revenue from foreign distribution. The status of this foreign market, therefore, is a matter of tremendous importance, and every development affecting it is studied with great care. Furthermore, the foreign market is of unusual significance in the motion picture industry because normally between 65% and 75% of all pictures shown throughout the world in recent years have been American-made product.

The significance of this foreign business to American distributors becomes the more apparent when the relationship between the cost of production and that of rentals is borne in mind. As has been indicated before, the largest expenditure involved in any picture is spent in the production of the negative. Up to the time that the positive films are available, it is the common belief that the investment in any given picture is highly speculative. A great deal of money is invested in a product whose value is not known. Having once made this expenditure, the producer-distributor incurs no further cost beyond that of distribution and exploitation. These latter expenditures are, it is true, significant, but the volume of the product itself is substantially the same whether the picture is exhibited in 500 or 7,500 theaters.



The distributor therefore has every incentive to secure the widest distribution possible for every picture. To double the number of theaters in which a given picture may be booked may easily increase the net revenue 10 or 15 times. Proportionately speaking, the largest part of this revenue is secured in the de luxe and first-run houses; every showing that can be secured adds to the income without materially increasing the cost, however, and the distributor feels that he has gained by renting a picture to a theater for \$7.50 if that makes possible an additional showing. In other words, he does have \$7.50 more gross revenue than he would have had, and that amount becomes almost entirely net gain.

Hence it is clear, to repeat, that a producer-distributor wants the very widest distribution of his product that he can get. This applies not only to the domestic distribution but equally to the foreign. If a picture can be distributed in the European or the Latin American market, it is so much additional revenue earned on that product, the principal cost of which has already been incurred. Hence, with motion pictures, world-wide distribution would, to a peculiar degree, be the ideal distribution. For a great many—perhaps, indeed, most—pictures, the real profit is realized from the foreign market. Since the domestic market may not do much if any more than yield to the producer sufficient revenue to cover his negative costs, a substantial volume of foreign sales is quite essential to financial success. Naturally, as will be indicated later, there are some serious conditions which result in additional costs, the most notable among them being the possible necessity of producing a so-called foreign version. However, the principle is clear.

The American companies have been very fortunate, therefore, in their ability to establish American motion pictures so firmly in the foreign field. A part of this position is due to chance, a part to natural advantages for production, and a part to the keenness of the men responsible for the direction of the industry. There are various reasons that the motion picture industry developed in the United States at

a more rapid rate than elsewhere. For one thing, there exists a great domestic market of high purchasing power, speaking substantially a single language, and interested in a general way in the same things.<sup>1</sup> These conditions in themselves would have made possible a very large motion picture industry in the United States had it catered only to the domestic market. In addition to this, there are certain natural advantages which have been favorable to the development of the industry. There exists a great diversity of natural scenery, particularly in southern California; also the climate is such as to make possible the outdoor filming of pictures practically throughout the entire year. This was a special advantage during the early stages of the industry's development and before the invention of the "special" Panchromatic or fast film and the development in lighting.

The industry was already well established by the time the World War broke out. In fact, it may almost be said that the European industry at that time was as well developed as was the American. The War, however, practically put a stop to the European production, whereas the American industry was permitted to grow without interruption. After the War, the rehabilitation of the industry in Europe was retarded because of the lack of capital, low purchasing power, heavy taxation burdens, and the pressure of essential reconstruction. In the United States, on the contrary, the purchasing power was at a higher level than ever. The use of the automobile caused people to leave home in search of recreation. Capital was liberally available for the construction of studios and theaters, for the study and improvement of technique, and, what was equally important, for the engaging of those European actors and actresses who were of real merit. Furthermore, the American burden of taxation was relatively light as compared with the European. In other words, the full value of the natural advantages possessed by this country could be capitalized to

<sup>1</sup> This general statement is, of course, subject to limitations. Compare with pp. 82-84.

the utmost and at a time when the European industry was least able to make the most of such opportunities as it possessed. The result was that the American distributors were able to obtain control of the foreign field almost without competition. By the time capital was once more available for motion picture production abroad, American films had obtained almost complete domination of world markets.

Since the American market provides from 60% to 75% of the American industry's total revenue, this advantage, having been obtained, was very difficult to undermine. Inasmuch as this market was so thoroughly dominated by the American distributors, both through the control of their own chains and through their relationships with the independent theaters, it was extremely difficult for any European country to obtain distribution in the United States for any film that was not quite exceptional. This fact, plus the lack of suitability of the average European production to the interests of the American audience,<sup>2</sup> practically limited European producers to pictures which might sell within their own markets, the purchasing power of which had been greatly reduced by the War. The American producers, on the other hand, knowing that, almost regardless of quality, their pictures would readily obtain distribution throughout the domestic market, could afford to spend very large sums on these pictures. Foreign companies, hampered by the lack of capital and by small markets, were far more restricted in their possibilities. For some time the experience of European producers served as a temporary factor in preventing their films from being as good as they might have been. The small profits in the industry offered little incentive, to men of real ability, to enter this field. At the same time the very large amount of money available, coupled with an assurance which

<sup>2</sup> A very important factor. While undoubtedly American producers ordinarily would have given preference to their own productions—other things being equal—most of them would have welcomed, to a substantial degree, suitable foreign productions to supplement their own, especially since they would not have had to bear the negative costs on such productions.

at times amounted to arrogance, was not entirely helpful to American producers. It did, after all, tend to standardize the American product, to emphasize the mass production methods in vogue, and to create a feeling that the foreign distributor and the foreign exhibitor would be compelled to take whatever they could get without the necessity of adaptation of the picture which was being produced to any special requirements presented by a foreign market. On the other hand, European producers with much less capital at their command were compelled to make particularly strenuous efforts to do something original in technique or direction. The highest appreciation should be expressed to those Russian, German, French, and Italian producers for the results which they actually obtained under the circumstances.

EXHIBIT 35

Markets for American Films, 1925

	Percentage of America's Foreign Revenue	Percentage of American Films to Total Films
United Kingdom	35	95
Germany	10	16
Australia and New Zealand	8	95
Scandinavia	6	85
Argentina	5	90
Canada	5	95
France	3	70
Japan	3	30
Brazil	3	75

The net result, however, has been that the American-made films have been able, even up to the present time, to retain a major proportion of the European market in spite of newly developed competition, governmental aid, and international agreement. The Latin American and Far Eastern markets have been even more completely dominated by the American film. Exhibit 35 shows, for certain selected countries, the source from which American producer-distributors obtained the major portion of their revenues, as well as the percentage that American films bore to the total films shown in those markets in 1925.



It is not to be expected that this situation would be permitted to continue without strenuous efforts on the part of those in foreign countries to free themselves from this domination. As a matter of fact, there were two important reasons for attempting this. In the first place there was the obvious suggestion that Germany, for example, with its 5,000 theaters, the United Kingdom with 4,500 theaters, and France with 3,000 theaters could each support one or more distributing companies whose pictures might find preferred showings in their own theaters and perhaps have some exhibition value elsewhere.

This economic reasoning was strongly supported by a political and social argument of tremendous import. The power of motion pictures to influence the conduct and beliefs of people is clearly recognized. In many respects they are more powerful in their influence than books and newspapers, particularly in countries where literacy is not very high. The film has a very direct appeal, it is highly emotional, and it is understood by every person; consequently it possesses the power to influence people where many other forms of appeal would have little weight. Whether in the United States or elsewhere, then, the influence of the film over public opinion is recognized as a force of primary importance. It is perfectly natural, therefore, that the Germans should be concerned with the effect of American motion pictures upon public opinion in Germany. The American-made picture introduces American ideals, American customs, American habits of thought; it displays American articles of commerce; and it interprets American points of view. To subject millions of people in Germany, France, or Italy time after time to this subtle influence could not but have its effect, not only in developing a favorable response to American attitudes of mind, but also in tending to stimulate the desire for American products. This development would, of course, be in many cases at the expense of domestic ideals and desires.

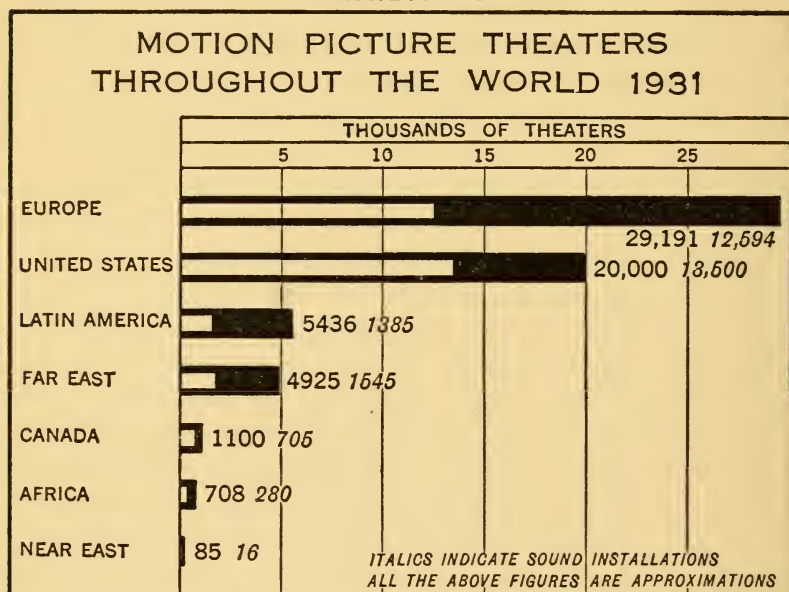
The existence of this situation was seized upon very early

by those who thought that it would be to their economic advantage to develop a motion picture industry within their own country. Realizing that it would be extremely difficult under conditions of free competition to gain a position of advantage, it was natural that they should have sought through the emotional appeal to secure governmental aid in support of their own enterprises and to have governmental barriers imposed upon the American product. Moreover, there already had developed a very substantial amount of really sincere sentiment in favor of quota restrictions on the part of patriotic societies, manufacturers' associations, and the like, upon which the foreign producers were not slow to capitalize. The "first of the important European countries to take action was Germany. The German 'kontingent' law required that foreign pictures could be imported only through the purchase by a foreign producer or distributor of a permit or kontingent which was issued to the domestic producer on the completion of a picture". The law of January 1, 1925, declared that for every foreign-made feature brought before the German censorship board a German film of approximately equal length should be presented for censoring at the same time. This regulation was abandoned on January 1, 1928, when it was found that it encouraged the production of cheap German pictures, and a straight import permit was substituted. This law was intended to have a number of important consequences. It definitely restricted the number of foreign films that could be imported. Again, it assured a number of German producers that a certain portion of the domestic market would be reserved for them. Finally, since the domestic producer could sell his product to whomsoever he pleased, it placed within the power of the German producer the ability to determine which foreign companies would be permitted to export pictures into the German market. The figure given for Germany in the second column in Exhibit 35 shows clearly the effect of this law in stimulating domestic production. It may be observed that a smaller percentage of Amer-

ican films was shown in Germany in 1925 than in any other major market.

The greatly reduced importation from the United States was not due, however, wholly to the kontingent even at that period; and today, the kontingent may be said to play only

## EXHIBIT 36\*



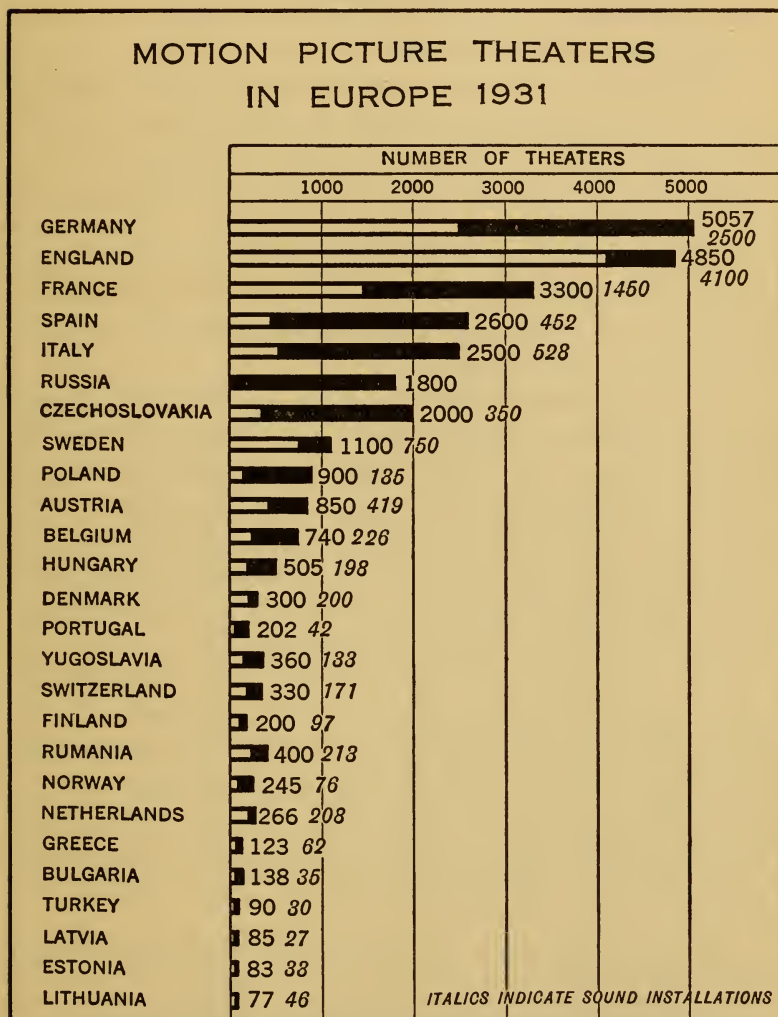
\* Table compiled by M. P. Dennis, Bureau of Foreign and Domestic Commerce

an incidental rôle in the matter.<sup>3</sup> Since that time, the situation has been modified somewhat. The introduction of sound came. The sound film has changed the import conditions throughout. The German public wants to see sound pictures—pictures with dialogue that it can understand. The emergency measure adopted, of presenting films with American dialogue and interspersed German explanatory titles, proved insufficient to meet the demands of the public. Also, the so-called German “versions”, in which German dialogue was synchronized after the pictures were completed, did not register any great success. To be fully competitive in Ger-

<sup>3</sup> This, of course, raises the question as to why the kontingent is retained at all.

many, a picture must be one in which the dialogue is wholly in German, and it should be recalled that this necessitated a tremendously increased cost to the American producer,

EXHIBIT 37\*



\*Table compiled by M. P. Dennis, Bureau of Foreign and Domestic Commerce

regardless of whether he made an out-and-out foreign version or resorted to "dubbing". With the silent film, it was comparatively inexpensive to retitl a picture in any lan-



guage; it probably required \$2,500 to cover the average cost of such adaptation. But it has cost somewhere between \$30,000 and \$50,000 to make a foreign version since sound pictures made their appearance. This requirement would reduce the number of American sound pictures even if there were no import provisions.<sup>4</sup>

This decrease in importations would naturally be reflected in an increase in the number of producing firms. In 1932, there were approximately 424 producing companies in Germany, but only slightly over 30 of them produced any pictures last year. In this connection it may be of interest to note that the figures of November, 1931, list 33 producers as making one film each; 11, two films each; 13, three to five films each; 4, six to nine films each; and only 1—Ufa—as making over 10 films.

As of December 31, 1931, Germany had 5,057 theaters with an aggregate seating capacity of 1,986,813. Only 190 of these have over 1,000 seats; 473, between 600 and 1,000; 1,685 between 600 and 300; and the rest, below 300. A total of 2,193 theaters, seating 1,159,291, play every day. Approximately 2,500 theaters (corresponding roughly to those having over 300 seats) are wired, and these represent practically all the revenue-producing outlets.<sup>5</sup>

The experience of Germany with the kontingent can scarcely be said to have been satisfactory to anybody. German producers were not able to create pictures equivalent in quality to those which could be obtained elsewhere, and the public in many instances reacted against them. Exhibitors found difficulty in getting a sufficient number of pictures to meet their requirements. The net result was that the

<sup>4</sup> In July, 1932, the German law was modified to some extent particularly with reference to dubbing, which practice was prohibited unless the films were dubbed in Germany. It may be noted that France likewise passed an anti-dubbing law similar to that of Germany. These provisions were of distinct benefit to the foreign producers. Geographically, Germany can easily produce direct versions in foreign languages, something the American companies apparently have not been able to do so readily.

<sup>5</sup> According to data received from the Motion Picture Division, Bureau of Foreign and Domestic Commerce.

German kontingent experiment must be designated substantially a failure. At the same time it may be noted that the number of German films imported by the United States has tended to show a rather distinct increase, although most of these have been for foreign language centers—a condition which is not quite comparable to a general distribution of a foreign-produced film with an English version. Many of these pictures have proved very successful.

Ufa, one of the larger producers, through its arrangements with Klangfilm, has at its disposal a large amount of experience and the productive capacity of one of the outstanding electrical concerns. Ufa theaters in Germany were the first to be equipped with sound reproducing apparatus. An interesting aspect of the situation in Germany is to be found in the fact that Ufa and Tobis, another large producer, finding little encouragement from bankers, turned elsewhere for their funds. Tobis is financed largely from Amsterdam; although Ufa got some money in the United States, it has been well established for many years. In consequence of these arrangements, both Ufa and Tobis were left comparatively untouched at the time of Germany's financial crash. It may be said that up to 1932 Ufa was apparently the only German producer-distributor showing a net profit.

At the end of 1931, little change in the German film import situation was apparent.<sup>6</sup> Germany has certainly made no concessions in its film import restrictions. The new law, which went in force on July 1, 1931, and ran till June 30, 1932, is in all essential respects just about like that of the previous year. Approximately 105 permits are allotted for the importation of sound films and 70 for silent as against about 90 and 120 the year before. (The words "approximately" and "about" are used because, in connection with each law, a certain number of reserve permits were given

<sup>6</sup> The author is deeply indebted to C. J. North of the United States Department of Commerce for much of the information relative to the present status of American films in Europe.

to the Ministry executing the law for use in emergency cases, and the exact number finally allotted would depend on the number of such cases.) In the present law, the basis for kontingent allotment is the number of German films distributed by a given company in the 18 months prior to July 1, 1931, as against two years in the case of the previous law. As a matter of fact, the German versions of American films have been relatively so unsuccessful in Germany and there have been so few of them that in the 1930-1931 film season most of the American distributors did not use all the licenses to which they were entitled. One great source of the trouble is that, due to the nontransferability of licenses, some companies have more licenses than they can use and others not enough.

The original German law was widely imitated throughout the rest of Europe.<sup>7</sup> The original French Film Decree of February 19, 1928,<sup>8</sup> provided that authorization to release foreign films in France be in the form of import permits which became property rights to be disposed of as the owner saw fit, subject, of course, to the limitations of the decree. The provision enforcing the export of the French productions was abandoned after long negotiations between the French and German industries; and in March, 1929, new regulations were recommended by the Control Commission

<sup>7</sup> The student of motion picture developments in Germany must be impressed by the fact that the real crux of our film problem in Europe today lies in Germany. This will become increasingly clear as one follows the development as indicated in the remainder of the discussion in this chapter. Germany's significance today results not alone from the fact that she was the first of the European countries to take any action, but also from her very drastic regulations which have so largely influenced the rest of the world, and also from her apparent desire—and a perfectly natural one—to secure as large a proportion of the business in Central Europe and perhaps Scandinavia as she can. The student of current developments can hardly overestimate the significance of the German situation.

<sup>8</sup> According to the records, the original French decree was published on February 19, 1928, becoming effective March 1; and on March 12, the Control Commission published its seven-to-one decree. On April 4, the Commission decided that not more than four of the seven visas could go to any one country, but, on May 4, receded from this position in favor of seven to one and furthermore gave the 60% exemption to the American trade.

under which, commencing October 1, 1929, permits were to be cut from a seven-to-one to a three-to-one basis. Additional importation required a so-called permit. The story of the development of the French situation will serve to illustrate the rather complicated character of the whole foreign problem.

It was the opinion of Major F. L. Herron, manager of the foreign department of the Motion Picture Producers and Distributors of America, Incorporated, and spokesman for the foreign departments of the individual film companies, that American companies could not afford to maintain organizations in France under the conditions imposed by the recommended decree.

American companies announced their intention to contract for no new business upon the expiration of existing contracts; trade showings were canceled pending the outcome of the proposed legislation. A threat to retire from the market was considered inadvisable because of the adverse sentiment that would result from taking action on a partially developed situation.

With American companies planning to suspend activities in France, the State Department of the United States prevailed upon to make representations to the governments which had adopted, or which contemplated adopting, restrictive film regulations. These were the governments of France, Germany, Czechoslovakia, Austria, Hungary, Italy, and Spain. No note was sent to Great Britain. Although Great Britain had set up a quota law which was unfavorable to American industry, it was already in operation and was designed to operate for a number of years. The notes pointed out the importance which the United States Government attached to the matter. In previous negotiations on import restrictions, the State Department had adopted the policy of leaving to the industry the problem of effecting more favorable terms in the exportation of its products. American embassies and legations in the countries to which representatives were sent were instructed to call upon the



ministers for foreign affairs and to discuss the existing situation affecting the importation and distribution of American motion pictures. The text of the note sent was as follows:<sup>9</sup>

The government of the United States has for some time observed legislative and administrative developments in foreign countries as they affect the American motion picture industry, which has become one of the leading industries of the United States. There have been persistent and substantial demands for American pictures on the part of foreign exhibitors, and this has created an extensive foreign market for this American product.

The building up of this market has involved an investment of large proportions, and it is felt that this investment is jeopardized by certain governmental measures arbitrarily restricting the distribution of American films. The regulations are often so subject to arbitrary and unpredictable change that they introduce an element of commercial uncertainty and industrial instability to which American motion picture producers and distributors find it difficult or impossible to adjust themselves.

This government does not intend to question such measures as may be imposed by any country for the purpose of protecting through censorship the national traditions of public morals, but this government has adopted no restrictive regulations similar in any way to those enforced in certain foreign countries. It believes firmly that the interests of the motion picture industry in all countries are best promoted by the freest possible interchange of films based solely on the quality of the product.

The department has observed with sympathetic interest the increasing number of films which have entered the United States in recent years on a free competitive basis and that the American motion picture industry has always shown a willingness to collaborate in the most friendly way with representatives of the industry for the unrestricted importation of films.

It is, therefore, the earnest hope of the government of the United States that the governments to whom it is making representations will have appropriate steps taken to avoid the serious injury to which American motion picture producers are subject by restrictive regulations, and which it feels must eventually prove a hindrance to international development of the motion picture industry.

<sup>9</sup> According to information given by the State Department and published in the *Film Daily*, April 19, 1929.

American interests desired the abandonment of all contingent and quota regulations, particularly when the purpose of such regulations was to subsidize motion picture producers. American representatives pointed out that their organizations had expended large sums in building up a business in France. It was estimated that the gross receipts from the distribution of American pictures in France approximated from 1% to 2% of the total foreign revenue of the larger American companies. In addition to the loss of sales it was estimated that, if new regulations made it unprofitable to maintain distribution in France, a loss in theater and real estate investments of approximately \$5,000,000 would be suffered by three of the largest companies.

The French motion picture industry was not in complete accord as to the wisdom of more stringent import restrictions. Within the *Chambre Syndicale de la Cinematographie Française* (French Motion Picture Chamber of Commerce), there were separate organizations of exhibitors, distributors, and producers, whose interests were of such a conflicting nature that a divergence of effort was apparent during the consideration of the film decree by the government.

French exhibitors, particularly in the provinces, expressed sympathy with the American position in the controversy. American pictures were relatively popular; it was reported that 63% of the total number of play dates in French theaters were for American pictures.<sup>10</sup> At an exhibitors' convention, many argued that a quota plan might be of assistance to the small number of French producers but that it was of no benefit to the rank and file of theater operators. A protest in the form of a petition signed by 2,500 exhibitors was prepared which declared that the exclusion of American pictures would cause the theaters and the government to suffer heavy financial loss, and deplored the patriotic issue

<sup>10</sup> *The European Motion Picture Industry in 1928* by Trade Commissioner George R. Canty. Published by the Bureau of Foreign and Domestic Commerce.

of a quota discussion which failed to consider the interests of the exhibitor as a citizen.<sup>11</sup>

Several French distributors maintained that the preference for American pictures was founded on the low price quoted by American distributing companies; that the large number of theaters in the United States and Canada gave these companies so much profit that they might regard the European market as "velvet". Quota laws were necessary, they argued, to enable the French distributor to sell his product at a profit in competition.

The French producer was primarily interested in securing substantial financial assistance. The existing plan permitted the sale of permits, which in effect constituted a subsidy of production. Dissatisfaction with the seven-to-one quota rested largely on the amount of the subsidy. The unfavorable attitude of the leader of the French producers toward the existing plan was said to have arisen from what that individual claimed to be the "failure on the part of American interests to carry out the promise of their representative during the 1928 negotiations". This spokesman of the French producing interests, M. Jean Sapene, at that time editor of *Le Matin* and a producer of motion pictures, stated that "the representative had promised to look into the possibilities of the distribution of French pictures in the United States and to do something to further a showing of foreign material". The facts were that a number of French productions had been taken for distribution in the United States by American companies. Most of these attempts at goodwill netted losses for their distributors. To cite but one instance, "Les Misérables", the picture arrived in this country in an edition of 22 reels. It required eight months of the most difficult and expensive efforts to rework and remold this product of French studios into a shape suitable for American audiences.

French press comment, apparently rendered timorous by the violence of Sapene's attacks on the American industry in his paper, *Le Matin*, became obviously partisan. At first

<sup>11</sup> As reported in *Variety*, May 1, 1929.

the daily newspapers printed long articles denouncing "American boycott", "lockout", and "attempt to force American films on Europe". The word "bluff" also appeared frequently in newspaper comment. Later, some of the newspapers shifted to a satirical attitude.

*Comoedia*, a French theatrical paper, went so far as to base an attack on the grounds that it was impertinence for the American Embassy to release statements to the press and to take part in trade discussions when there was no American ambassador appointed. The action of the Department of State in transmitting its note to the French government (among other European governments) on the subject of quota discrimination was criticized as undiplomatic, some editors referring to it as "blunt dollar diplomacy". The Motion Picture Producers and Distributors of America, Incorporated, and the American film industry were violently attacked, and a demand was made for the expulsion from France of the representative of American motion picture interests.

The *Courrier Cinematographique*, an important trade publication, and *L'Ami du Peuple*, Coty's new daily, however, violently denounced from the beginning all contingent and quota regulations, arguing that no product could be forced upon the public. They urged that France could progress only through quality competition in picture production, since the world's markets would always be open to good pictures.

During a series of joint conferences arranged by the American Commercial Attaché at Paris between representatives of the French and American industries and the Cinema Control Commission before the Undersecretary of State for Fine Arts, American representatives urged the substitution of a tariff on film imports for the quota restrictions. It was suggested that a part of the proceeds from such a tariff on each foreign picture entering France might go toward the tax budget, thereby reducing the burden of the theaters, and the balance be doled out to French producers. It was



estimated that a customs tax averaging \$400 on each picture imported would be effective. A high protective tariff similar to that on other products was held to be consistent. While the suggested arrangement was satisfactory to the interests of the French industry, the French government withheld its approval.

Two proposals were advanced by the French government. The first was a compromise to a four-for-one quota, and the second provided for the prohibition of blind and block booking and a limitation of imports to 515 films a year. A refusal on the part of the American representatives to accede to either proposal led to settlement of the controversy, in September, 1929, by an agreement to return to the *status quo* of the previous period, the seven-to-one quota. The following cable describing the agreement was received by the Motion Picture Producers and Distributors of America, Incorporated, on September 20, 1929:

In the Office of André François Poncet, Undersecretary of State for Public Instruction and Fine Arts, and in his presence, Charles Delac, president of the French Motion Picture Chamber of Commerce, and Harold L. Smith, delegate of the American Motion Picture Industry (Motion Picture Producers and Distributors of America, Incorporated), have signed the following agreement, which they have discussed and drawn up in common accord, which wording is the result of the discussions which have been held for several months.

Recognition on the part of both that a new element which was considered unimportant a few months ago, the sound and talking film, has changed absolutely the aspect of the world motion picture market.

The contracting parties, not having been able to come to a definite agreement on any of the methods of protection existing or contemplated decide:

To request the Cinema Control Commission to maintain the *status quo* (that is to say, the regulations and transitory measures adopted by the Cinema Control Commission on May 9, 1928)<sup>12</sup> which actually governs the distribution of foreign films, silent as well as sound and talking, in France, for a period of one year, until October first, 1930. During this period which actually appears sufficient, and which

<sup>12</sup> See *Motion Pictures* by Howard T. Lewis, Harvard Business Reports, Vol. 8, Copy of French Film Decree, p. 456.

will be prolonged for another period of one year, until October first, 1931, if an arrangement is not reached between the contracting parties before May first, 1930, the contracting parties will draw up, in the most friendly and amiable spirit, and notably on the French side the French Motion Picture Chamber of Commerce and the Cinema Control Commission will recommend to their Government a regulation based on a method of protection different from the present <sup>13</sup> principle, which, while safeguarding the general interests of the world cinema in France, will assure the necessary protection to the French motion picture industry.

As soon as the Cinema Control Commission and the competent Ministry will have approved what precedes, the commercial relations between the French and American motion picture industries will be resumed as in the past.

The agreement was approved and the distribution of American films in France was resumed.

The determination of a permanent and definite arrangement to become effective at the expiration of the temporary agreement required a careful analysis of many factors in the situation, among which might be included: (1) the status of the French industry and the opportunity for the development of the French market; (2) the effect of the development of sound pictures; (3) the relative satisfaction given by the form of legislative restriction to the various interests; and (4) the possibility of international control. It should be realized that the factors discussed do not include those questions of public welfare that are inseparably linked with the economic aspects of the problem.

An examination of the status of the French industry shows that, in comparison to the United States and in relation to other leading film countries in Europe, France was considerably behind in the matter of modern motion picture exhibition. Most of the 4,000 theaters <sup>14</sup> in France were privately owned and operated, few circuits or first-run thea-

<sup>13</sup> The American representative held out for a considerable time on the wording at this point. American interests desired to incorporate the phrase "different from the quota principle", a concession which the French representative refused.

<sup>14</sup> *Film Daily Year Book*, 1929.

ters being available for effective exploitation of picture values. Less than 40% operated daily and only 900 had a capacity of 750 seats or over.<sup>15</sup> Only 5% or 6%<sup>16</sup> of the French public, as compared with 25% of the American public, were regular patrons of the moving pictures. Total realty investment in theaters in 1927 was estimated at \$30,000,000.

The reason for the undeveloped status of the exhibition phase of the industry was said to be the relatively exorbitant entertainment tax collected by the government. The total of state, municipal, and poor taxes was estimated at from 17% to 40% of the gross receipts in Parisian theaters and from 15% to 31% in all other theaters. Under the state entertainment tax, over 120,000,000 francs were collected in 1928, an increase of nearly 15,000,000 francs over similar taxes collected in 1927.

It would appear, therefore, that with capable leadership and a favorable attitude on the part of the government, progress might be expected in theater construction, exhibition policies, and profitable operation. Already, American companies had initiated improvements. A theater under American control successfully adopted in 1928 the policy of continuous showings, and another was the first to be wired for the projection of sound and dialogue films. No anti-American feeling was evident and the American film retained great popularity.

The yearly consumption capacity of the French feature film market was estimated by the French Motion Picture Chamber of Commerce at 600 films. This permitted a double feature program policy in many theaters. American interests considered this estimate to be too high. The number of feature films distributed in 1929 was only 437, possibly because of the suspension of business by American

<sup>15</sup> *Ibid.*

<sup>16</sup> Bureau of Foreign and Domestic Commerce, Trade Bulletin No. 617, 1929.

companies.<sup>17</sup> The following table shows the apportionment of the market for 1929.

EXHIBIT 38

Feature Film Distribution in France, 1929\*

Source of Production	Number	Source of Production	Number
France	52	Sweden	1
United States	211	Poland	1
Germany	130	Czechoslovakia	1
Italy	3	Armenia	1
Great Britain	23	Miscellaneous	2
Russia	9		
Denmark	3	Total	437

\* Source: *Cinematographique Française*, January, 1930.

The production of motion pictures in France was stimulated by the protection afforded. The following table shows the increase in the average cost of the productions.

EXHIBIT 39

Production of French Feature Films, 1924-1928

Year	Number of Feature Films	Approximate Cost per Film
1924	68	.....
1925	73	.....
1926	55	.....
1927	74	\$30,000
1928	94	40,000

The number of companies engaged in production was greater than the number in the United States, many companies producing a single feature film and no company making more than 10 pictures during the year. The largest producers in the United States offered from 40 to 70 feature pictures each year. The average cost per film was considerably less than that of American companies, many of whose feature pictures were made at costs in excess of \$500,000. The annual business of French producing companies in 1928 in the domestic and foreign markets was estimated at

<sup>17</sup> See Howard T. Lewis, *op. cit.*, p. 455.



90,000,000 francs.<sup>18</sup> Approximately 3,000 persons were employed in the production of films.

Fundamental contrasts with the industry in the United States were the retarded stage in the development of motion picture distribution and exhibition; the lack of sufficient capital for large-scale operations; a comparatively limited national market; a relatively less successful technique in producing pictures of popular appeal; and a closer relationship between the industry and the government, a relationship which was the result of a request for assistance from the government.

The introduction of sound pictures with dialogue had an important effect upon the relations between the motion picture industry of France and that of the United States. France was slow to adopt the production of the synchronized sound picture. The lack of domestic production of electrical reproducing equipment, the concentration of American equipment manufacturers upon the home market, and the six months' suspension of business during the negotiations over quota regulations were responsible perhaps for the tardy development. There were indications, however, that the talking film would become as popular in France as elsewhere.

The introduction of talking pictures complicated the problem of legislative restriction of imports and emphasized a necessity for smoother working relations between the industries of the two countries. No French talking films of any consequence had been produced. Competitive conditions were on an entirely different basis from that before the introduction of sound.

While a measure of success might be obtained at first in the exhibition of English dialogue pictures, it was generally recognized that a long-run program would require the use of French actors in productions especially adapted to French consumption. The possibility of arousing anti-American agitation might be increased by the addition of English

<sup>18</sup> *Film Daily Year Book*, 1929.

dialogue. This possibility, in turn, would enhance the development of the nationalistic character of motion picture production and exhibition and would disturb the existing conditions of film production.

American producers were experimenting with a number of alternative plans in attempting to satisfy in part the requirements of European countries in the new type of motion picture. While the development of the talking picture presented grave problems to the American company desiring to produce films for international distribution, the same problems were intensified for the foreign producer. For the American distributor, a market of approximately 20,000 theaters in the United States and Canada, and, to a certain extent, similar markets in English-speaking countries, were available for initial exploitation. In addition to England, Australia and New Zealand were relatively important film markets; the United Kingdom rated in 1928, among foreign countries, as the largest quantity market for American films. The French producer, on the other hand, was immediately limited to a market of perhaps 5,000 theaters. Previously existing inequalities in competitive conditions between the United States and foreign producers would become even more strongly favorable to the American producer, particularly during the period when foreign countries were dependent upon the American product. It was natural, therefore, that satisfaction with the form of legislative restriction varied with the different interests in the French industry.

At the time of the announcement of the 1929 agreement, American film officials expressed the belief that the agreement presaged the end of the quota principle in legislative restrictions, not only in France but also in other countries of Europe. During the negotiations preceding the return to the seven-to-one quota plan, it was evident that the French government had no intention of abandoning the quota principle for the proposed frontier import duty.

The objection on the part of the French government to

any plan involving the import duty, no matter how stiff a duty might be accepted, might well rest in the precedent of subsidizing an industry from import revenue and in the difficulty of determining a satisfactory distribution of such a subsidy in the trade. The indirect subsidy effected by the quota plan presented fewer difficulties in administration and in many ways permitted a greater control by the government of the operation of the industry. It was the belief of the officials of the Motion Picture Producers and Distributors of America, Incorporated, that the French government would never grant a subsidy to the native motion picture industry. Although there were exceptions, such as Austria and Hungary, the governments of European countries as a rule felt financially unable to provide a subsidy and were unwilling to do for one industry what could not be done for other industries.

The willingness of the French producer to accept a plan which did not involve reciprocal distribution of French films in the United States indicated the importance to the French producer of assistance in raising capital regardless of the source, together with a recognition of the difficulties in the production of feature pictures which could compete effectively with American product in the United States. Any future plan of protection, therefore, would be satisfactory to the French producer in the degree to which, through the sale of permits and more facile distribution in the home market, it provided him with capital. There were those, however, who were of the opinion that the failure of certain producing interests in France to obtain capital was the result of their unsatisfactory ventures in the past rather than because of any shortage of capital for worthwhile productions.

During the 1929 negotiations the interests of the French distributors and exhibitors were apparently not wholly in agreement. Distributors were interested mainly in protection through limitation of the number of films imported, thus restricting the competition with domestic product. The

exhibitor, on the other hand, required American product, not only to supply him with enough films to meet program needs but also, because of the popularity of American films, to satisfy public demand. The strength of the exhibitor's position was apparent in its influence toward the settlement of the dispute over 1929 restrictions.

The diverse interests of the French government and the individual activities in the industry constituted a weakness in negotiation which would be partially overcome by further vertical and horizontal integration in the industry, providing a more attractive investment for capital, the weeding out of small "mushroom" producers and distributors, and a common interest in the exploitation of native product and in the welfare of the industry. Under such conditions, less protection would be required and more power would exist to obtain the protection deemed necessary. As a result of the negotiations and the resulting agreement, the leadership of the French industry passed into the hands of the president of the Motion Picture Chamber of Commerce, a representative with a more friendly appreciation of American interests in the market than had been held by the former leader. The attitude of the contemporary Undersecretary of State for Public Instruction and Fine Arts was also considered by the American association to be friendly.

On July 1, 1931, France abolished its film contingent against such countries as did not themselves have film contingents. This is another way of saying that there are no restrictions now against the entrance of American films (barring import duties). Although this has been given much publicity as a concession, apparently France was looking entirely to her own interests and really conceded nothing at all. The picture is something like this. The contingent was established in silent film days when American films dominated the market. Since films now have to be in French dialogue to be successful in France, the position has entirely changed. American companies, including those producing in France, cannot possibly furnish more than a small fraction



of the number they put on the market in silent film days. Conversely, French studios have greatly increased their output and will show around 100 releases for the current year. However, this is not nearly enough to supply French exhibitor needs, and hence it is to France's interest to bring in as many foreign-made French dialogue pictures as possible. The United States, the main source of these, has only enough to supplement rather than compete with French-made releases. Hence France did the only economically sensible thing in removing all burdens on the importation of films from the United States. American producers have shown concern, however, at the French quota, in effect for one year beginning July 1, 1932. Since all "dubbing" of foreign languages must be done in France, "dubbed" pictures are particularly affected. In addition, foreign-language films may be shown in only five theaters in the Paris district and in five other theaters in France. Censorship of all importations is also provided for in the decree.

A desire for protection of native industry in European film-producing countries other than France, as well as for restrictions on the importation of American films in all countries, had provided an incentive for the development of an international concentration of economic policy. The leaders of the industry in Europe had recognized an inability to meet American competition and the necessity of finding a European sales market of sufficient magnitude for European production.

Practical proposals toward the formation of a "Film Europe" were made as early as 1926 at the first International Film Congress, when the Central Distributors Association strongly advised the creation of an international economic film bureau. The task of the proposed bureau would have been to prepare the necessary basis for such a joint activity and to collect and disseminate statistical information on the entire film industry. The necessity of creating such an international bureau, limited by the requirements of exhibitors, was also pointed

out by the French representatives at the International Exhibitors Congress which was held in August, 1928, in Berlin.<sup>19</sup>

Success in the formation of an international control over European film companies would mean a serious challenge to the American position in the European market. In 1928, Germany, Great Britain, and France produced 221, 95, and 94 feature films respectively, a total of 410 films costing \$22,360,000. Other countries produced as follows: Austria, 23; Czechoslovakia, 19; Poland, 14; Italy, 8; Spain and Portugal, 11; Sweden, 8; Denmark, 7; others, 19. The 1928 output of American producers was about 800 films at an estimated cost of approximately \$115,000,000. As a market, Europe had 27,000 motion picture theaters for a population of 470,000,000 as compared with America's market of 20,500 theaters for 120,000,000 people. Irrespective of the attitude of such a union toward American product, the development of reciprocity in the distribution of European films and joint-production contracts would hamper American film distribution.

The establishment of a "Film Europe", however, had met with many obstacles. No definite agreements had been reached. The second meeting of an international group was not attended by representatives of Great Britain. The American industry received an invitation to participate after the date had been set for the meeting.

The officials of the Motion Picture Producers and Distributors of America, Incorporated, were of the opinion that the American industry had little to fear from the formation of a cartel in the European industry, since the American interests controlled a very large share of the European market. Furthermore, the relatively small size of the European companies in the industry, with the attendant lack of executives with a capacity in and knowledge of international relations, made such a development improbable.

<sup>19</sup> Bureau of Foreign and Domestic Commerce, *op. cit.*

A study of recent developments in the European industry indicated that an amalgamation of interests would be more likely to take the form of an increased number of corporate combinations embracing activities in two or more countries. German producers, aware of the necessity for a wider market for their relatively large output of feature films, had endeavored by means of interstate agreements to create export markets in Austria, Hungary, Czechoslovakia, and Italy. At least 10 such agreements were made in 1928. French producers, in a less degree, had also turned to such agreements as an outlet for their product. Two agreements of this sort were reported in 1928: Cineromans (French) with British International, and with Terra (German); and Franco-Film (French) with Gainsborough (British) and Deutsches Lichtspiel Syndicat (German).<sup>20</sup>

Such interstate agreements were considered by the association to be only temporary in character, because in most cases they tended to favor the company in the stronger position at the time. Generally lacking in any tie-up of exhibition outlets, at the most they provided merely assurance of distribution and control of credit. Because of failure on the part of the stronger interests to live up to the general terms of the arrangement, however, many agreements had not been extended beyond the initial agreement.

Uncertainty concerning the future legislative restrictions in France would hinder, as it had done in the past, the activities of American motion picture companies. Under existing conditions there was little incentive to promote subsidiary producing facilities, distributing contracts, or exhibition houses with American capital. Losses through the suspension of business during negotiations on quota restrictions were unfortunate, not only for the welfare of American companies, but also from the standpoint of the French exhibitor.

Of interest in this connection were the proceedings at

<sup>20</sup> *Ibid.*

Geneva. An international convention for the abolition of import and export prohibitions and restrictions was signed in Geneva in November, 1927, and a supplementary agreement in July, 1928. A considerable number of exemptions and exceptions were approved on the general principle that moral or humanitarian grounds or reasons of public security might be used as a reason for restrictions. Since films were not specifically mentioned as an exception, the matter was brought directly before the July conference by the American Minister to Switzerland, who protested against the assignment of such reasons as a pretext for the restriction of American films when the real motive was believed to be a desire to protect home industry by restrictive measures which it was the intent of the convention to abolish.

In this connection the effort to secure a Franco-German producers' alliance may be noted. In 1930, a reciprocal agreement was drawn up providing for the unrestricted exchange of French and German talking pictures, a move which took on a deeper significance with the suggestion that the French film industry was supporting a proposal that the French government inaugurate a new quota law similar to that of the Germans. The subsequent history of the development is not of concern at this time. The effort was not successful and the attempt was withdrawn. There were various reasons for this failure, but from the American point of view significance is to be found in the attempt to weaken the position of American pictures in these two countries. It was a matter of grave concern particularly to those American producers who had established studios in France or Germany, especially to Paramount, who had been operating a unit at Joinville near Paris.

This reciprocal exchange of French and German product has, since July, 1931, taken on new significance through the fact that France, though she kept her contingent against Germany, needed all the French versions of German pictures that she could get (as well as a good market in Alsace-Lorraine for German films) and at the same time wanted



an outlet in Germany for German versions of her own pictures. Thus exhaustive and exhausting discussions have been held with a view to providing for such a reciprocal exchange. In February, 1932, these negotiations were still going on, but with only fair chance of success since the two interests were at loggerheads over the basis for the exchange. Germany wanted to send 40 German films to France in exchange for 25 French, while the latter wanted it 25 to 25. The only interest which the American trade has in any such proposal is that in any exchange American films produced in France shall be regarded as French. The Germans have appeared unwilling to concede this, but the French had agreed that they would not enter into such an agreement on any other basis.

The English law was of a somewhat different character. Instead of dealing directly with the number of foreign films that could be imported, it required that English exhibitors reserve a certain portion of their screen time for British pictures, this portion increasing from year to year. This system has not been without its drawbacks. To the American, at least, most British films are too long, and the fault is particularly the result of the quota act which allows every foot of film to be counted in the computation of the percentage. The result is that a very large number of the films would be much better if they were ruthlessly cut.

The restriction quotas were set for a ten-year period under the Cinematograph Films Act which became effective on January 1, 1928. During the year ending March 1, 1929, the distributors' quota was  $7\frac{1}{2}\%$ , while the exhibitors' quota for the year ending September 30, 1929, was  $5\%$ ; in other words, British theaters were required to devote that percentage of their playing time to British-made films. These percentages increase gradually under the act until by 1938 both distributors and exhibitors will be required to devote  $20\%$  of their time to British-made films, a requirement, however, ceasing automatically in 1940. It is necessary for exhibitors to be licensed by special permit for each of their

theaters. These permits are issued by the Board of Trade before November 1 of each quota year. Exhibitors are required to furnish the government with data from the British pictures which they have shown. It is of interest to note also that there are added provisions against blind and block booking which forbid the renter to sell or the exhibitor to buy sight unseen and which limit advance bookings to a specified period of time.

There are other possible criticisms of the law. On the whole, however, the fact remains that the British industry in 1930-1931 made more money probably than it had ever made before. One writer, after pointing out that in 1927 England imported 8,118,763 linear feet of negative film and that in 1929 the total had fallen to 6,688,927, goes on to state that British production is now in full swing. The American monopoly is broken. Financial methods have been reorganized in the light of lessons learned from the American industry. Production and distribution are being linked together by the two leading companies—British International Pictures, Limited, and Gaumont-British, Limited—both of which control large circuits of theaters, thus assuring themselves of a substantial market for their productions. This statement may appear to be unduly optimistic, but it marks very real development in the British market in the direction of independence and bids fair to result in the production of pictures in Great Britain which will secure a place on the American screen. As an effort to introduce these pictures in America, Gaumont-British, Limited, leased a theater on Broadway as an exploitation house, a venture, however, which subsequently proved a financial failure. Now other similar ventures are proposed by producer-distributors of other countries. Thus Ufa made arrangements to lease a Broadway house.

By the beginning of 1928, a great many European countries had regulations similar to the German or French permit system. The Austrian and Italian laws were closely modeled on the system, the principal difference between

them and the German law being in the number of permits which the domestic producers in the several countries received for each completed film.

The law of October 1, 1927, providing that 10% of the exhibition time of all Italian theaters shall be devoted to the showing of local product, is still in force. Lack of Italian films has made it a dead letter. The law of most concern to the American film trade is that which prohibits the use of any but Italian dialogue in all talking pictures shown in Italy. It has been rigidly enforced as to dialogue and somewhat less so as to songs in American musical films. Another feature disquieting to the American film companies doing business in Italy is the tendency on the part of the Italian government through the Fascist Theater Federation of Italy to regulate contracts between distributors and exhibitors particularly as to the percentage of the gross which shall accrue to each. This came up in an acute form in December, 1931, owing to exhibitor complaints over minimum guaranties and percentages of the gross demanded on "City Lights" and "Ben Hur". As a result, the Fascist Corporation of Theatrical Entertainments decreed that all minimum guaranties were to be forthwith abolished, and under no circumstances could the distributor ask for more than 40% of the net takings and that only on "specials". This decision is being strenuously fought by distributors, and it may result in some compromise.

The Austrian regulations have always been complicated and have furthermore been subject to such frequent change that it is difficult to follow them. According to the best information available, the latest law went into effect July 15, 1931, and this does contain concessions in modification of the previous law of September 15, 1930. These concessions are briefly: (1) Only one and one-half import permits are required to bring in a nondialogue sound film (formerly three were required). (2) The price of each permit is stabilized at \$140 (formerly the price fluctuated, and usually

American distributors were charged all that the traffic would bear). (3) A specific place has been designated where permits are bought and sold. In all the rest of the provisions the new law is substantially the same, except that an Austrian producer does not get 30 permits for each film produced unless he uses Austrian apparatus both in filming and in developing the film. If he does not use Austrian apparatus, he gets only 21 permits. There is one further feature

EXHIBIT 40<sup>21</sup>

Markets for American Films, 1931

	Total Films	American Films	Percentage of American Films to Total Films
United Kingdom	647	470	72.0
Germany	286	80	27.9
Australia and New Zealand*	513	457	89.0
Scandinavia**	296	179	60.5
Argentina	(No figures yet available)		90.0***
Canada	398	377	94.7
France	453	220	48.5
Japan	(Exact number not available)		11.6
Brazil	310	240	77.4

\* Average compilation.

\*\* This is an average compilation obtained by adding the total films used in Denmark, Norway, and Sweden and the number of American films shown in each market and then dividing by three.

\*\*\* This figure is for 1930.

of the new law, not previously found, which will work to the disadvantage of the American industry and to the advantage of the Germans. If an Austrian film producer sells a sound film abroad at a price of not less than \$14,000, he gets an additional 30 permits. These permits are turned over to the Film Bureau of the Chamber of Commerce and are used as permits for the importation of foreign films which must, however, have been produced in the country to which the Austrian picture has been sold. Obviously, practically all Austrian films that are sold at all will be sold in Germany.

Such is the law as it stands officially. To understand the

<sup>21</sup> Compare with table for 1925 shown in Exhibit 35, p. 397, to see the effect of restriction on the percentage.



real nature of the disadvantage under which the American companies are working, however, some further explanation is necessary. With the Sascha studio in the hands of a receiver and Selenophon unable to produce for lack of capital, there is no production of films in Austria nor can there be until new capital is found for resuscitation of these two studios. However, films are being imported by means of Vormerkscheine (as the permits are called) just as though there were a full-blown industry in operation. Vormerkscheine are given to the Germans in accordance with the fourth paragraph of the regulations of July 10, 1931, which stipulated that the sale of an Austrian film in a foreign country *per se* gave the producer an additional 30 Vormerkscheine.

In this connection Hofrat Lanske has taken the attitude through an agreement with Germany, which calls for an exchange of films on the basis of 1 Austrian film for 10 German films or Vormerkscheine in the same equivalent, that, due to the inability of the Austrian industry to produce the required Austrian film, it is not right that the German films be kept out of the Austrian market through failure on the part of Austrian producers. Therefore the Spio (Spitzenorganization) are receiving their 30 Vormerkscheine gratis. These Vormerkscheine are granted as interim certificates and are called "Vorschuesse".

Thus, in the year 1931, a total of 497 Vormerkscheine were issued on production of Austrian films. Of this number 315.5, or 64% were handed to the Spio gratis. American distributors at the same time paid for 114.3 Vormerkscheine or 23% of the total number issued. The German interests took from the Austrian producers two pictures on which rentals were not over \$30,000, the German Filmbund received 64% of Austria's Vormerkscheine, while the Americans paid \$15,000 for 23% of these certificates. Furthermore, one Austrian film was sold in the United States upon which a return of perhaps \$5,000 was received.

The main point is, however, that the contingent has been established for the encouragement of the Austrian film production. Figuring as generously as one can, the following revenue is all that can be accounted for in the nature of receipts for Austrian films circulated abroad:

From:	
Germany (rentals)	\$30,000
United States (sale)	5,000
All other countries (rentals)	15,000
	<hr/>
Total	\$50,000

While these various European countries have been imposing these restrictions, countries in other parts of the world have been even more strict. Thus, in Argentina the duty was increased 1,400% with the obvious intention of entirely preventing the importation of American pictures. This increase in the Argentine tariff was vehemently protested, and as a result was lowered to its original status and a 20% tax on net profits substituted. This was on April 15, 1931. On January 20, 1932, this tax on profits was removed and instead a duty of 15 gold pesos per kilo was put in effect. This, although less than half the original tariff increase (the one replaced by the net profits tax), still represents a considerable rise even so. The unfortunate part of this provision is that the amount of available Argentine-made product is quite insufficient to meet the requirements of that country. With its 975 theaters, Argentina in 1930 imported from the United States 6,980,104 feet of sound film and 6,542,465 feet of silent film. Mexico very shortly followed suit and increased its duty by 1,200%. The Mexican tariff is aimed especially at talking pictures with dialogue other than Spanish. Thus the duty on these was increased from 8 to 75 Mexican pesos per kilo, while talkies in the Spanish language had a duty increase of from 8 to 20 Mexican pesos per kilo. This new tariff was originally put into effect on October 21, 1931, but due to protests from the American distributors the decree was suspended until April 22, 1932. It is difficult to see how American companies

can do business in Mexico under these conditions. Australia demanded 8 cents a foot on every reel imported. India, in September, 1931, raised its duty from \$15 a reel to \$31 a reel. Actually, the duty is more than \$31 a reel, for technically the duty is  $4\frac{1}{2}$  annas per foot (an anna is  $2\frac{1}{4}$  cents) on an *ad valorem* value of  $37\frac{1}{2}\%$ . Reckoning  $4\frac{1}{2}$  annas at 10¢, 1,000 feet would be assessed at  $37\frac{1}{2}\%$  of \$100, or about \$37.50 per reel. Probably the most drastic of all the tariffs was that of Sweden who recently raised her duty from 80 to 1,580 crowns per hundred kilos. It is quite true that these regulations were in some instances subsequently modified, but the intent is perfectly clear that failure to retain these drastic provisions was due, not to lack of desire, but to the practical impossibility of meeting local demands under the circumstances created.

Throughout the United States there has been a gradual but substantial increase in the number of foreign motion pictures shown; most of these have been displayed in the smaller theaters in large centers of the population in which there is a substantial number of persons of foreign extraction. A total of 141 foreign-made films were imported into the United States during the twelve-month period ending December 1, 1932. They were received from the following countries.<sup>22</sup>

EXHIBIT 41

Source	Number of films	
	1931	1932
Germany	60	67
Great Britain	21	22
France	17	13
Russia	12	12
Italy	11	4
Sweden	4	5

Although Paramount was the only American company to attempt distribution of foreign talking pictures to any extent in 1931, Metro and Universal each booked one foreign version, the former in French and the latter in German.

<sup>22</sup> *Variety*, January 19, 1932.

Paramount showed four French versions, two German, two Swedish, and two Italian.

In such cities as New York and Boston, the number of foreign-born persons and a still larger number of foreign descent make up a very considerable portion of the population. To these, talking pictures in German, French, or Italian can make a definite appeal. "The silent film might bring before the new American scenes and sights from the European homeland; the vocal picture brings the thrilling sound of a mother tongue. To such ancestral audiences may be added in our large cities the old-stock Americans with a knowledge of foreign languages. . . . Another factor is our students of foreign languages in our public and private schools." These foreign-population neighborhoods throughout the United States have been very definitely appealed to. One estimate has it that there are audiences for a potential circuit of 500 theaters for periodic showings of European productions. The experiences, in 1931, of the Transcontinental Pictures Corporation, which handles the Cines-Pitaluga product and which has obtained bookings for Italian pictures in 50 Greater New York theaters alone and more than 50 additional dates played in other eastern localities, are indicative of the possibilities in this direction. The length of the booking depends upon the available patronage, but even one- or two-night showings have turned out profitably because performances were gala events in their respective communities and in many cases drew packed houses at good admission prices.

There also can be observed the beginnings of chains of theaters devoted exclusively to foreign pictures. The Tobis Theaters Corporation was reported to have made plans for the operation of 19 key city theaters following the signing of contracts with Moviegraph, Incorporated, Moviegraph of Maryland, Europa Cinema, Incorporated, Associated Cinemas of America, and Max A. Goldberg. In all these theaters, to be known as the Tobis Theaters, foreign talking pictures will be used. It may be noted that the Tobis



Theaters Corporation is a part of an international organization operating in the United States, Germany, France, and England. Definite steps have been taken toward the building up of a chain by Ufa.

One aspect of the international question, which has had tremendous influence upon the whole problem, is the patent situation. In June, 1930, a meeting was held in Switzerland for the purpose of ironing out the extremely complicated situation arising from the patent controversies. A number of distinct issues arose. Electrical Research Products, Inc., and RCA were concerned with the improvement of apparatus by Tobis-Klangfilm so that the Tobis-Klangfilm reproduction apparatus, which was not operating satisfactorily in the Central European theaters, could be opposed. Western Electric and RCA were also endeavoring to come to some agreement with the European producers concerning geographical division of the territory between the major companies. There were also problems surrounding the royalty patents. Subsequently a world sound-patent conference held in Paris undertook to tackle these same types of problems. An agreement, which resulted in the withdrawal of several court actions, had for its chief aims the exchange of patent rights throughout the world of the German and American companies involved; and the division of the world into three different categories for the sale of sound-film equipment—first, "exclusive German territory"; second, exclusive American territory"; and third, "neutral territory". The Germans were to be given the business of Germany, Austria, Hungary, Switzerland, Czechoslovakia, Netherlands, Denmark, Norway, Sweden, Finland, Yugoslavia, Rumania, and Bulgaria. "Exclusive American territory" meant Russia alone. Certain countries were to be cited as neutral, namely, Great Britain, Belgium, Luxembourg, France, Spain, Italy, Poland, Lithuania, Latvia, Estonia, Greece, and Turkey. A royalty rate covering interchangeability was to be set up. For a time the German interests held out on this proposal, but subsequently all

delegates did sign an agreement calling for the interchange of product on a plan of apportioning the world territory as regards apparatus. German makers were to supply Central Europe, Scandinavia, Holland, Austria, and Switzerland; the American makers were to deal with North America, India, and Russia. The rest of the world was to be supplied by both German and American manufacturers. These other territories were to be open to both groups under a royalty arrangement for registering on other than local systems. Also there was to be a per reel royalty set up for important product originating in foreign countries. For example, an American product used in territory apportioned to Germans would call for a royalty payment if reproduced on German apparatus. The whole situation becomes very complicated with a tremendous amount of political influence being exerted. The amounts of the tax collected vary widely, not only from section to section, but also apparently from country to country. It is safe to say that up to the present no satisfactory adjustment of the patent problem has been evolved. With the German kontingent legislation operating as it does, the producers in that country are in a position to nullify any practical solution of operation. Ufa in particular seems to have been interested in making the most of this political opportunity, though Klangfilm does not seem to be far behind. The American interests which are most affected by this whole alliance are by no means agreed as to the proper procedure. Jealousies between the electrical interests in this country doubtless play some part. At the same time, however, the persons most affected are the producer-distributors. It is their contention that the fight is one for the electrical interests to make since they are in one sense responsible for the difficulty, and after all it is the patents on their equipment that are involved. While recognizing their concern in the matter, the electrical interests can see no reason why they should make the battle alone. It is safe to say that in the long run some workable plan for interchangeability with respect to the recording apparatus will

be evolved. It would be unfortunate if such interchangeability were made permanently impossible.

In the early days of sound in the United States, the same problem arose. Influenced undoubtedly by their remembrances of the General Film Company suits of 25 years ago, as well as by the fact that their interests would be actually impaired rather than furthered as a result of strict insistence upon noninterchangeability, the American equipment companies soon gave up the policy and accepted interchangeability. Their decision in this matter may have been caused also in part by threats from Allied States and others to make a legal issue of the controversy, to say nothing of some uncertainty which might exist as to just what their patent rights might evolve into in the event of a contest.

In trying to reach any conclusion on this whole problem, it is essential to bear in mind that there are two general types of issues involved. One relates particularly to the commercial problems. The dominant place in the foreign market maintained by American motion picture companies is quite understandable. It is the result of a number of factors, among which may be mentioned the momentum of the early start, the greater financial resources, and the larger number of acceptable films produced by American companies. It was natural to expect that foreign producers would seek to control a larger part of their own market as time elapsed. It was not surprising that they should have resorted to legislative support for their efforts. It is difficult, however, for mere legislative action to overcome powerful economic forces. It may be recalled that in France's experience the exhibiting interests did not whole-heartedly support the program advanced by the foreign producers. It may be added, moreover, that neither did the exhibitors in Germany and England. Their failure to do so, in the light of the subsequent events, illustrates the ultimate power of the public and of the exhibitor over producer-distributors.

A second very fundamental question arises, although little emphasis has as yet been laid upon it. The subtle power of

the screen to influence public opinion has long been recognized. Many foreign countries are much concerned about the effect of the American film upon the mind and thought of their nationals. It is a matter of primary concern to the United States that pictures exhibited abroad truly interpret American life and that they properly interpret American ideals. Unfortunately this has not always been the case. This whole problem, too, is closely related to that of promotion of international peace. Since European exhibitors find it difficult to get along without American films, the complications become even more serious when American producers, secure in this knowledge, are indifferent to the effect upon foreign thought and policy of American-produced films exhibited abroad.

In the long run the best protection of American motion picture interests abroad, assuming that a solution is found to the problem of producing multilingual sound pictures, appears to lie in a willingness to distribute good foreign-made films in the United States and to exhibit abroad only those pictures which do not arouse antagonism or friction and which truly present America to the world. There is a real need for definite and constructive thought, with the ultimate consequence of distributing abroad pictures which will not arouse resentment and misunderstanding. The adoption of such a policy as is here suggested may make it necessary to forego some immediate profit from time to time. Whether or not such a long-time point of view will be developed and maintained still remains to be seen. It is possible that this desired result may be obtained through some real degree of cooperation between producers in the various countries. Such relationships are taking form. Thus, Fox and Ufa, RKO and Tobis were, at the end of 1932, making definite progress toward cooperation. Among the German producers, tangible results were attained earlier. Thus Ufa has definite relationships with Gaumont-British of London, Svensk of Stockholm, Hunnia of Budapest, and Sascha of Vienna; Tobis has some affiliations with Cesare of Rome.





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